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Solicitors as Advocates.

PRACTICAL SUGGESTIONS

IN CONNECTION WITH

PROCEEDINGS BEFORE STIPENDIARY MAGISTRATES AND JUSTICES OF THE PEACE, ACTIONS IN COUNTY COURTS, CORONERS' INQUESTS, COURTS-MARTIAL, ETC.

CORRIGENDA.

Page 32, line 21, *for* "is doubtful," *read* "may be doubtful;" *for* "competent," *read* "convenient."

Page 133, line 29, *for* "Many sections," *read* "Except section 177, the whole."

Page 133, line 30, *for* "have," *read* "has."

Solicitor of the Supreme Court of Judicature, Agent for the Solicitor to the Treasury (War Department)

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TO

CHARLES CLARIDGE DRUCE, Esq.,

President

OF THE INCORPORATED LAW SOCIETY,

THIS LITTLE WORK

IS, WITH HIS PERMISSION, DEDICATED

BY

THE AUTHOR.

PREFACE.

WITHOUT presuming to offer advice to those members of the Solicitors' profession who have acquired experience as Advocates, I venture to hope that the following pages may prove serviceable to many who cultivate, or intend to cultivate, advocacy as part of their professional practice. At the same time, it is not to be supposed that this little work professes to offer anything beyond a sketch or outline of the subjects with which it deals. Possibly, however, what I have written may serve to put readers in the way of seeking fuller information and guidance, or, at any rate, may induce them to consider the subject of advocacy theoretically before plunging blindly, as so many do, into its actual practice. It is so much the fashion to talk as if advocacy were practised only by members of the bar, that people are apt to forget the vast amount of work of this description which falls into the hands of the Solicitors throughout the kingdom—work which becomes the more varied and important as the dimensions of the Statute-book increase. Not long since a clever and amusing book on

advocacy was published by a member of the bar; but it was essentially a work written by a barrister for barristers, and the many valuable hints which it contained were offered chiefly in connection with cases which are tried by juries. Solicitors, however, rarely find the opportunity of addressing a jury, and must practice the art of advocacy, if at all, under conditions very different from those w ich prevail in the High Court. This being the case, it may be useful for a practising Solicitor to offer some practical suggestions upon a subject which is, or ought to be, of interest to a numerous and increasing section of his professional brethren, at the same time asking indulgence for such faults as may exist in the design and execution of the work.

As regards the observations on the law which will be found in the chapters on Courts-Martial, I wish to acknowledge the aid derived from *Thring's Criminal Law of the Navy* and *Simmonds on Courts-Martial.*

D. M. F.

PORTSMOUTH,
24th October, 1881.

CONTENTS.

"True eloquence consists in saying all that is necessary, and nothing but what is necessary."—*La Rochefoucauld.*

INTRODUCTORY CHAPTER.

Addressed to Articled Clerks and Newly-Admitted Solicitors.

THOSE who give a moment's thought to the subject will admit that of late years vast changes have been brought about in both the law and the lawyers. The ancient landmarks and narrow paths of the solicitors' profession are fast disappearing, and the old and estimable school of lawyers, who adopted a semi-clerical style of costume, and practised conveyancing and little else, has comparatively few living representatives.

Tempora mutantur et nos mutamur in illis, and this being so, numbers of the recruits who crowd into the solicitors' ranks every year cannot expect to be able to choose a particular branch of practice and say that by that, and that alone, will they earn their living.

Unless, therefore, the young professional man is placed in exceptional circumstances, he may find it necessary to take what comes, advocacy included. Nor need he fear that by doing so he will incur the sneers of any persons whose opinion is of importance; for, happily, the prejudice which formerly existed against solicitors who practised as advocates in criminal courts, as well as elsewhere, is no longer found amongst sensible people.

On what principle, indeed, should one think scornfully of the advocate who conducts a case in a country police court, when there is no reproach attached to the learned counsel who defends or prosecutes at the assizes? Such invidious distinctions, if not absolutely exploded, are at any rate dying out with the old and vulgar notion that all lawyers were rogues, the man who undertook criminal business being regarded as the worst amongst them.

Turning to the great mass of civil business which is within the jurisdiction of the county courts, perhaps one can hardly help calling to mind the opinion offered by a former president of the Incorporated Law Society when giving evidence before a committee of the House of Commons. The ex-president considered that no solicitor of standing would practise in these courts, and added some other observations to the like effect.

Such a suggestion could only have the effect of casting an uncalled-for slur upon many a professional man of high character and ability; yet indignation would be wasted upon so rash an opinion, for the witness proceeded to admit, with refreshing candour, that he had never entered a county court in his life, and, in effect, that he knew nothing whatever about the subject on which he proposed to enlighten the committee. Articled clerks, solicitors, and even members of the bar, who feel discouraged by such an opinion coming from such a quarter, may feel to some extent consoled if they turn to authorities more

competent to offer an opinion upon the character of the business conducted in the county courts. Not very long ago the *Times*, in a leading article, and referring to the cause list at certain assizes, remarked: "A large number, perhaps a majority, of the civil cases determined at the assizes, are, as respects the property at stake and the legal difficulties involved, not in the least superior to the average of county court litigation." While one of our most distinguished county court judges, speaking of a case on which one of Her Majesty's counsel appeared in a superior court, asserted that "eight or ten of equal magnitude and difficulty were often disposed of in a day in the county court."

Thus, then, those who are disposed to be desponding as to the field open to solicitors as advocates should take heart of grace, and remember that it is only by showing that we can make good use of existing opportunities that we can hope to prove our fitness to be entrusted with further privileges. Whether Mr. Cowen's scheme for converting the county courts into district courts will ever be carried out it is unnecessary to speculate, but it is certain that sooner or later the constitution and jurisdiction of these courts will be altered, and that that alteration will have the effect of giving enlarged scope to those solicitors who practise as advocates.

Earl CAIRNS is well known to be a supporter of some such scheme of extension, and other high legal dignitaries are believed to share in his opinions. It is certain, too, that any enlargement

of the powers of local courts which would have the effect of cheapening and expediting the administration of justice, would have the hearty support of the commercial public. On the other hand, the vast majority of the bar, whose members in the House of Commons number something like one hundred and fifty, will not be likely to facilitate a change which would probably send a vast amount of business from their own centre of industry to different parts of the country, and which would strengthen the position of their good friends the enemy, in the lower branch of the profession. However, even as matters stand, the solicitor who practises advocacy in a populous district will probably consider that his work is tolerably varied and sufficiently responsible. For some reason or other the county court jurisdiction in equity matters is resorted to but little, yet, apart from the infinite types of common law action, the unlimited jurisdiction in bankruptcy proceedings and the extensive powers possessed by some of the county courts in admiralty matters, afford a fair scope to the moderately ambitious practitioner.

Putting aside the familiar tribunals of the police courts and county court, there are others which will assuredly afford the able advocate opportunities of practice and profit. I have dealt with the chief amongst these in the following pages, and it will therefore be needless to refer to them specifically in the present chapter.

In the meantime, it will be well for articled clerks and young solicitors to ask themselves,

not whether, under the existing conditions of professional life, they have a fair chance, but whether they are qualified or qualifying, to seize their opportunities as they arise and turn them to a good account.

The mere reading requisite to enable a man to pass the three examinations will not necessarily make him a good lawyer, and much less will it make him a competent advocate. There is no royal road to excellence in advocacy, and the man who expects, without previous painstaking and study, to master this most complicated art, will not only find himself grievously mistaken, but will probably spoil his chances though he may never discover the reason for his failure. The marvel is not that there are few good advocates in the solicitors' profession, but that there are so many, for how unusual is it to find an articled clerk who has resolved to make himself as fit as he can for practice of this description, whether by cultivating the art of public speaking or by availing himself of every occasion of watching how such work is done by those who understand it? If barristers, as a body, with all their facilities for studying the best models, fall short of anything approaching excellence, how can the law student in a country town hope to be successful, unless he at least tries to learn?

The newly-admitted solicitor, who has not a place ready made for him, and who has adopted the Micawber principle that without his troubling himself very much, something will turn up, may

find it a little embarrassing when he is looking out for a berth, or a partnership, to read the numerous advertisements in which it is stated, as a *sine qua non,* that the candidate must be either a good advocate or prepared to undertake advocacy. Not coming under either of these descriptions, he will possibly have to fall back upon that humiliating type of advertisement, which announces that he seeks a situation with the view of assisting in such and such a department, and that a small salary will be accepted, as the advertiser's chief object is to gain experience. Such an object is of course extremely laudable, but what, it may be asked, has such a gentleman been doing for five years previously?

Articled clerks should not forget that the mere routine of office work, (not much of which is generally left to them unless they show themselves anxious to undertake it), will do but little to make them fit for any branch of the varied and responsible labours which they may have to undertake in after life. A knowledge of the theory of law is of course indispensable, but much else is wanted if a man is to succeed in his profession. Every articled clerk would do well to remember the words of a speaker at one of the annual provincial meetings of the chief law society. Referring to the president's address, he said : "In addition to proper legal education, he attached great importance to that kind of culture which gave a man an insight into the ways of mankind, which was as valuable to a young practitioner as an acquaintance with the technicalities of the law."

It is germane to the subject of advocacy to refer

to another topic which was discussed at the same meeting, when the following resolution was moved and seconded:

"That in the opinion of this meeting, the time has now arrived for the Incorporated Law Society, U. K., to seek parliamentary powers enabling solicitors to be called to the bar upon passing the bar Final Examination."

The motion was withdrawn, after some discussion, as it was understood that the society intended to promote a bill with the suggested object.

It appears that the four Inns of Court have now passed a resolution, the effect of which will be that solicitors may become barristers on keeping one year's terms instead of three; and that two of the Inns have agreed to accept a certificate of the candidate having passed the Law Society's preliminary examination in lieu of a certificate of his having passed the preliminary examination for the bar.

The president of the Incorporated Law Society intimated, at a recent special general meeting of its members that the council would consider the above "a satisfactory solution of the difficulty;" it being assumed that the other Inns of Court would accede to the same terms as those conceived by Lincoln's Inn and the Middle Temple (*a*).

Of course the Bar Final Examination will still have to be passed and only solicitors of five years standing can avail themselves of the new regulations.

Probably we have not heard the last of the subject, nor of another inter-professional question

(*a*) The subject was further discussed at a meeting of the Society held since this sheet was in the press.

viz., with respect to solicitors being allowed the right of audience at Quarter Sessions. I believe that in Ireland such right exists, but in England it is the exception and not the rule. Quite recently, when one such exception was permitted, the members of the bar then present rose and retired in a body. Probably they have by this time repented of their policy, for however dignified may have been, the bearing of those injured advocates (and truly that mournful procession must have been an imposing one) it must have occurred to some of the lookers-on that they were only playing into the enemy's hands. The best way of holding a position is not to vacate it.

A few years ago I read the report of a trial at Quarter Sessions, in which a solicitor appeared on one side and no less an advocate than Mr. Sergeant Ballantine upon the other. Moreover the solicitor got the verdict and was complimented by the Recorder. Possibly he considered the compliment superfluous, for he was an unusually able advocate, and had acquired considerable reputation in the district in which he practised. A few years afterwards, the same solicitor asked permission to conduct a case in a neighbouring Court of Quarter Sessions; but, while not questioning the ability of solicitors to undertake such duties, the Recorder held that, there being a sufficient bar in attendance, he could not accede to the application.

Whatever the rule may be, it is not improbable that circumstances may arise in which the solicitor may be almost compelled to act as an advocate in

courts in which he must usually be silent, and that whether he wishes to be heard or not. An instance of this kind came within my knowledge, upon the hearing of an appeal to a Court of Borough Quarter Sessions. The learned counsel who was instructed, I forget on which side, was absent, and, as the brief was voluminous and the case important, it was impossible to ask another counsel to take his place at a moment's notice. Thus the interests of the client were in serious jeopardy. The difficulty was solved by permission being granted to the solicitor, whose counsel was absent, to take his place as advocate. I fancy that the client's interests did not suffer, for it so happened that the solicitor was a practised advocate but what might have happened if he had been nothing of the kind?

A somewhat similar case occurred not long ago at certain assizes. The learned counsel for the prosecution was in the other court (as he is apt to be when wanted). It was a criminal prosecution, and, in the absence of counsel, the judge requested the solicitor concerned to come forward and conduct the case. This the solicitor of course proceeded to do, until the advent of counsel relieved him from his unexpected position. Where such contingencies are not very remote, it is just as well to know how to act when they do arise, and such knowledge cannot be acquired except by those who practice as advocates.

There is one particular class of business with regard to which solicitors are almost invariably allowed audience at Quarter Sessions, viz., licensing

matters. Counsel have precedence, but it is only just to the bar to say that the right is one which many of its members regard as invidious and unreasonable, and of which on those grounds they are never eager to avail themselves.

The mutual rights and privileges of solicitors and counsel must always be of considerable interest to the profession as a whole, but one cannot expect both of its branches to take the same view with regard to them.

A more practical and immediate question which a man will be likely to ask himself is this: Does advocacy pay?

The answer is that, although a practice consisting almost exclusively of advocacy is not desirable, (for if a man wants that alone he had better go to the bar at once) yet that a general practice which includes practice in the inferior courts is certainly remunerative; remunerative not so much with respect to the mere fees obtained for taking cases in the police court or county court, as by reason of the incidental gains obtainable when once a good reputation has been established. The man who turns his back upon these courts has usually little or nothing to do at Quarter Sessions or on the criminal side at the assizes, and thereby misses a very profitable kind of business.

The same may be said with regard to inquests, board of trade inquiries, and courts martial, which tribunals have frequently in their several spheres, to deal with large interests in every sense

of the term, and where these are concerned the remuneration is, and ought to be, in some degree commensurate with the skill and responsibility involved on the part of the advocate.

I could mention an inquest in which a solicitor received a fee of five hundred guineas, exclusive of disbursements, for services rendered to a large manufacturing firm whose commercial reputation was, to some extent, staked upon the result of the inquiry.

I could also refer to courts martial in which the solicitor's fees were of the most liberal character.

No doubt court martial practice is a speciality, but still, in this country, where naval ports and garrison towns are so numerous, no solicitor can be sure that his services may not be retained and, unless he knows something of the practice, he may possibly be disposed to decline a retainer, and thereby miss a valuable opportunity. It is for these reasons that I have found a place in the following pages for describing the procedure at such courts, which exercise immense powers over the naval and military portions of the population. Even those who may never be called upon to practise in such courts may perhaps advantageously acquire a slight knowledge of their proceedings, without which the report of a *cause célèbre* such as sometimes attracts universal attention may very considerably mystify them as to the mode in which such trials are conducted.

Such fees as I have instanced may no doubt be regarded as exceptional, but they are the excep-

tions which go to prove the rule, although to command high fees in advocacy, as in other things, one must endeavour to step out from the ranks of mediocrity.

One strong recommendation as to advocacy fees is that they are generally paid down either at the time of, or before, the services rendered. The fee is earned and pocketed and the task of posting entries and sending in bills of costs is avoided. This tedious necessity, which exists in most other kinds of professional work, is almost as disagreeable to the solicitor as it is irritating to the client.

But beyond such considerations as these, is one which should be present to the minds of all young practitioners, viz., the professional prizes which are open to those especially who practise advocacy.

Who can be better qualified for the office of registrar of a county court than the man, who, as an advocate, has familiarised himself with the practice of such courts? The same observation applies as regards the appointments of magistrates' clerk, clerk of the peace, and coroner. No doubt the nomination or election of such officials is influenced by a variety of circumstances, but in the general way it is to be assumed that the best man, *i.e.*, the man who is best qualified for the vacant post, will secure it.

Offices of dignity and profit are not so numerous in the profession that we can afford to miss an opportunity of rendering ourselves eligible for them. Where both solicitors and barristers are eligible, the former are too often heavily handi-

capped by a variety of circumstances which do not appear on the surface, and, thus, many an appointment for which plenty of competent men could be found in our own ranks, falls into the hands of members of the bar who do not disdain to be styled "solicitor" to this or that department of the state.

The Prosecution of Offences Act, 1879, created a new type of office, for which both barristers and solicitors are eligible. Section 4 provides that a person appointed to be the director of public prosecutions, or to be an assistant of such director, shall be either a barrister-at-law, or a solicitor of the Supreme Court of Judicature, and shall be, in the case of the director, in actual practice and of not less standing than ten years; and, in the case of an assistant, in actual practice, and of not less standing than seven years. There is the important reservation that neither the director nor the assistants shall, directly or indirectly, practise their profession except in discharge of their duties under the act.

A director was appointed soon after the Act was passed and the choice fell upon one of Her Majesty's counsel. So far as I am aware no assistants have been appointed, nor do I know what their salaries would be if the appointments were filled up. The Act provides for such salaries being fixed by the Attorney-General, with the approval of a Secretary of State and the consent of the Treasury.

There is another point of view from which the

practice of advocacy can be recommended to the young solicitor: people will often be more ready to entrust a young man with work of this description than with other kinds of business. This is a singular fact, but, as the result of observation, I am enabled to assert it without the slightest hesitation. The explanation may be that persons who require a solicitor's services in the inferior courts generally belong to the humbler classes, and these are in the habit of manifesting a blind confidence in the powers of a man who has acquired the right of calling himself a solicitor, no matter whether he be a lawyer merely in name, or in knowledge. His qualifications will frequently be taken for granted; if he possesses them they can be exercised, if he does not, the worse for his client and himself.

This ready confidence is a great consideration, for much difficulty and heart-burning are frequently experienced by the young practitioner, because he cannot get people belonging to a more educated type of clients to entrust him with responsible work or to attach much value to his opinion. Clients have a not unnatural preference for seeing the principal or senior partner or even an old clerk (who perhaps professes no knowledge save that of mere routine,) rather than place themselves in the hands of the new-fledged lawyer, who, may, perhaps, have taken honours and who feels that he is much better versed in modern law than the head of the firm himself. These are difficulties which are inseparable from the lot of the beginner,

and, without tact and forbearance, a young man may take a long time to overcome them.

Even in advocacy it must to some extent be the same, though the obstacles may arise in a different quarter; indeed it would be absurd to pretend that in one direction more than in another the novice will find a path of roses, but patience and good-temper may stand him in better stead than gifts which he may regard as less homely.

Before all things a keen sense of honour and a high standard of integrity are essential to the man who hopes to practice in criminal courts, with credit to himself, and furthermore great watchfulness is required.

This will be readily understood, when it is remembered how difficult and delicate the advocate's duties sometimes become; yet there is no good reason why such duties should not be discharged without either losing one's self-respect or forfeiting the regard of others. Practitioners of any experience will at once understand my meaning and to those who find themselves placed in any position of embarrassment I would suggest the advisability of consulting some fellow-practitioner of standing and sound judgment. In the absence of proper caution a solicitor may be made the unconscious instrument of an unscrupulous client with the result of bringing discredit upon himself, although his only crime may be that he is of an unsuspecting disposition.

Counsel are privileged in not being brought into personal contact with the clients whose cause

they plead; with solicitors it must necessarily be otherwise and their task becomes the more difficult in proportion.

A well-known counsel of great experience in criminal cases, once expressed to me his unwillingness to allow my client, a man of good position, to be present at our conference.

The client was the prosecutor but there were certain reflections upon his character raised by the other side. Counsel considered that, however unintentionally, a man is prone to colour his evidence in accordance with the views or opinions expressed by his advocate. It is against giving any ground for such a thing as this that the solicitor has to guard in dealing with witnesses, with the same care that he must avoid being made the medium of a dishonest or preposterous defence.

It would be desirable that every practitioner in criminal courts should read the observations of the learned judge whose painful duty it was, to pronounce sentence upon Mr. Edward Froggatt, formerly a member of the solicitor's profession, but who was convicted on a charge arising out of the notorious "turf frauds," a few years ago.

Finally, I think that the man who cultivates advocacy will find it a useful training for a broader sphere than that of a mere professional calling. It will never represent time lost or labour thrown away, and, though the results may not compare with those attained by some of the more prominent members of the profession, both in town and country—and in writing these words

my mind reverts to one solicitor in particular whose name is familiar throughout the kingdom, and who has more than held his own against some of the most distinguished advocates at the bar—yet it will be reasonable to count upon such a measure of success as a man is entitled to look for though his abilities may be less than commanding.

PART I.

Summary and other Proceedings before Stipendiary Magistrates and Justices of the Peace.

If it is worth while to undertake a "case" at all, it is also worth while to make the best of it that can be made. Hence it follows that the advocate must begin by carefully ascertaining the facts and the law as applicable to those facts before he goes into court, where he will be expected to know all about both the one and the other. Sometimes there is ample opportunity of getting full instructions and information upon all points which may arise in connection with the subject, but more often it is otherwise. The poorer classes—and, of course, it is with those that one is chiefly brought in contact in criminal business—have a happy-go-lucky habit of putting off the visit to the lawyer until the last practicable moment. There are almost invariably two clear days between the issue of a magisterial summons and the return-day, but the defendant will in the general way think "it will do" if he takes the process down to the solicitor's office on the morning of the day on which the case is to be heard. The summons will, of course, furnish the short particulars of the charge, and will further state

that the alleged offence has been committed "contrary to the form of the statute in such case made and provided." If it were to state expressly what that statute is it would be more convenient, but, at any rate, you must look it up, unless circumstances have already made you perfectly familiar with its provisions.

But, in the first place, get your client's history of the affair, judge of its consistency and probability, and make notes for your use in court.

Then comes the question as to witnesses. Probably some are forthcoming, and the defendant may have brought them to your office. It will be advisable to see them separately as you will thus have a better opportunity of judging of the real merits or demerits of your case. Very often your client will think that you will be able to call numerous witnesses whose evidence would be legally inadmissible. To convince him of his error is your necessary, but sometimes exceedingly difficult task. It is also probable that he will inform you that "several more will be down at the court." The better plan will be to send for these witnesses at once, or else to ascertain personally by a question or two as you pass into the court whether they corroborate the statements of the others whom you have seen and examined in detail. Of course it may frequently happen that you are compelled to leave the taking of these statements, or, in other words, the preparation of the brief, to your clerk, but unless he is especially qualified for such a task, it will be wise to see the

witnesses personally and just run through their statements with them, or in the result you may find that some point of importance has been entirely overlooked. At any rate, proceed by rule and system, and let one of your first rules be that you will never call a witness into the box unless you have seen him personally or had a trustworthy report not only of the evidence he can give, but also of his occupation, &c. Reckless as such conduct may seem, I know that it is no uncommon thing for a solicitor who has merely had the name of a witness given to him and the client's statement that he will be able to prove such and such a fact, to put the man in the witness-box. This mode of conducting a case *may* prove successful, but the chances are against it; and the solicitor will in all probability find his own witness either knows the facts from hearsay, or perhaps saw that half of the transaction which is almost useless for the purpose of getting at the whole truth with regard to it. The result may be the amusement of the public, the indignation of the court, the injury of the client, and the discomfiture of the advocate. Time spent in seeing your witnesses is not lost. Practice will enable you to get at the pith of their evidence without much trouble, and to reject all that is irrelevant and valueless. Make up your mind which of them you intend to call and in what order. Witnesses of the same class and type should not follow each other into the witness-box. For instance, if it is necessary

to offer the evidence of persons in your client's employ, do not call them one after the other if you can possibly avoid it. To do so causes a bad impression, whereas if an independent witness can be interposed the effect will for obvious reasons be better. On the like grounds it is not desirable to call members of the same family one after the other. Take care so to arrange the order of the evidence that it shall become clearer and stronger as it proceeds. Symmetrical proportions may be attained in the conduct of police cases as well as in other things which appeal more directly to the imagination.

Having marshalled the facts and obtained a firm hold of the theory of the case which you are about to set up, it will be as well to make a few notes of the several heads under which you can best deal with the subject. There are occasions upon which an advocate may with advantage to his client and himself write out his intended speech beforehand, but in the general way this should be avoided, for it frequently happens that the case as it presents itself in court and out of court means two very different things; and the advocate who has led himself to anticipate only one course of events and has prepared his speech accordingly may find his mind hampered by particular sentences or points of argument which have been stored up in readiness for use, but which turn out to be utterly inapplicable when the battle has really to be fought and won, if possible. I am convinced, however, that there are few

advocates who would not feel the advantage of having previously reduced to some order and system the arguments, the excuses, or the apologies which they are afterwards to put forward in public.

Then as to the law of the case. It is always advisable to take into court the particular Act of parliament under which the proceedings are taken, or at all events to have with you the law as summarized in the well known works of "Stone" and "Oke." If you are concerned for the prosecution, that is to say, if it is commenced under your guidance, you will have had sufficient opportunity to arm yourself at all points. When the proceedings are to be initiated by information, it will in the general way be sufficient to take the informant to the magistrates' clerk's office, where the information will be prepared. If you represent a public body, such as a sanitary authority or a state department, you may be expected to prepare your own information; but this should never be attempted by an inexperienced man or without reference to precedents. Magistrates possess considerable powers of amending informations and complaints, but some of them are not disposed to exercise such powers very freely, and a faulty information will often lead to your being tripped up at the outset. Moreover, it is only fair to the accused that he should have the charge against him properly set out so that he may prepare to meet it.

The information when signed must be exhibited

or sworn, according to the law and practice, before a justice, and the summons will then follow. In many cases the summons will be granted as a matter of course, but where the matter is of a doubtful or exceptional character, the magistrates' clerk will tell you that you must make a formal application. This application will be *ex parte*, and according to the better practice it will be taken in private. Applications for warrants must invariably be supported by a sworn information. (See 11 & 12 Vict. c. 43, s. 2.)

Whatever application you may have to make it will be wise to mention it to the justices' clerk beforehand. This "paves the way," and therefore avoids difficulty and waste of time.

If your opponent is in possession of some document which is material to your case, do not omit to give him notice to produce it, so that if he fails to "put it in" when called for you may give secondary evidence of its contents, or at any rate make its non-production a matter of observation to the bench.

Of course, if you have reason to doubt whether any of your witnesses will be in attendance, you will take the precaution of obtaining summonses for them. Formerly these could only be enforced as against persons within the justices' district, and a crown office *subpœna* was required for persons outside it. This, however, has been altered by the Summary Jurisdiction Act, 1879, and the justice's summons will be operative

throughout England, subject to the conditions mentioned in section 36 of that Act, which, however, should be read in connection with section 7 of 11 & 12 Vict. c. 43.

The mode in which it will be advisable to deal with your case when in court must depend to some extent upon the nature of the presiding authority, *i.e.*, whether the case is to be decided by a stipendiary magistrate, or by unpaid justices, advised by their clerk.

Whilst, on the one hand, it is satisfactory to address legal arguments to a man who is learned in the law, on the other it will be found that in the general way lay magistrates are more tolerant, because they are of necessity less critical. Sometimes lay magistrates sit with a stipendiary, and in such cases they must be treated with due respect as component parts of "the court," but the arguments, at any rate upon legal questions, will be dealt with by the presiding genius. More often, however, the court consists either of the one paid magistrate, or of two or more lay justices. If you have to address the former take especial care in your contentions on points of law to condense your case as much as possible, and be prepared to state it without hesitation. Many stipendiaries pride themselves on the expedition with which they get "through the list," and you may find yourself called upon suddenly as follows: "Now, Mr. So-and-So, what is your defence?" This is apt to be embarrassing to the advocate who has not quite made up his mind

what line to adopt, or whether, indeed, he has any defence at all.

At present the bulk of magisterial business is conducted before "the great unpaid," and whereas one stipendiary can do alone whatever is required to be done by two justices of the peace, when you appear before the latter you must be careful to see that you have a properly constituted court. It is no doubt for the court itself to attend to this, but sometimes through an oversight, or from some other cause, one justice essays to exercise functions for which two are required, and thus much loss of time and confusion arise, which might be avoided by a gentle reminder from the advocate who knows his business thoroughly. There are, of course, a number of matters in which one justice can act alone, *e.g.*, receiving informations and complaints, granting warrants, hearing applications for sureties to keep the peace or be of good behaviour, granting licensed victuallers' occasional licenses (to sell away from the licensed premises), charges against vagrants, day trespasses in search of game, &c., &c. For granting new liquor licences the quorum of justices is three, and licences for theatres outside the lord chamberlain's jurisdiction cannot be granted by less than four justices. Some justices take all applications in open court, but the better practice is to hear *ex parte* applications in private.

The Summary Jurisdiction Act, 1879, has considerably altered the law by limiting the powers

of justices under certain circumstances. The alteration is doubtless intended to abolish the old system under which it was usual in country districts for vagrants, workhouse inmates who had destroyed their clothes, and others who could be dealt with by one justice, to be taken before him at his residence, and then and there privately and summarily disposed of. Now, however, every case which can be heard by a court of summary jurisdiction is to be tried in open court, and either at a petty sessional court-house or an occasional court-house (for definitions of these see section 20). Where a case under that Act or under any other Act, whether past or future, is dealt with in an occasional court-house the period of imprisonment imposed is not to exceed fourteen days, and the fine is not to exceed twenty shillings; but (sub-section 11) the hearing may be adjourned to the next practicable petty sessional court. An indictable offence which the Act enables justices to deal with summarily can only be tried by a petty sessional court, and any case arising under the Act other than such indictable offence, or arising under any future Act, which is triable summarily must, unless it be otherwise prescribed, be heard, tried, and determined by a court of summary jurisdiction consisting of two or more justices.

Mark the right time to begin your case. The officer of the court will call it, and, if there be a prisoner or defendant, will either state the charge or read the information or complaint. It

is then for you to open your case, if you are the prosecuting solicitor. Many nervous or forgetful advocates jump up and commence to speak at the wrong moment, perhaps before the prisoner is in the dock or before the defendant has pleaded, and thus have to be checked in their career and begin over again when the proper time comes. This is the kind of thing which makes a man look foolish.

Before doing anything else you may possibly deem it necessary that the witnesses should retire, but, unless some good purpose is likely to be effected or some fraud detected thereby, it is better to leave this matter to the officer of the court. Remember that you have no absolute right to demand such a course, and to make the application in all cases gives an idea of fussiness which is to be deprecated.

If you really think it necessary that witnesses should be ordered out, it is better merely to suggest it to the court as desirable. Medical men and other persons who are to be called as skilled witnesses should not be asked to retire, but there is no reason why police officers should be exempted, although they frequently regard themselves as privileged persons.

As regards priority you have absolutely no rights, but as a matter of courtesy some magistrates give precedence to cases in which solicitors are concerned. If they do so, accept the privilege with gratitude; but if it is not offered, wait your turn. It is better not to begin business by

asking a favour, especially if there is a likelihood of its being refused.

If you are prosecuting and the case is simple, it will often be unnecessary to open the case at all, or at most, it will be sufficient to mention the statute and section under which the proceedings are taken and the penalty or punishment involved.

If it should be requisite to make an opening speech, bear in mind the object to be attained, which is to furnish a concise outline of the facts of the case and of the law which governs it, so that the bench may have a reasonable notion of what is to follow. Begin at the beginning, but don't wander back to it again. Unfold the case systematically, and without exaggeration. Use short sentences, and avoid parentheses as you would a pitfall.

It is true that you may not have an opportunity of again addressing the court upon the facts, but do not let this consideration tempt you to anticipate the defence or arguments which may be set up by your opponent. In such matters nothing is more dangerous than surmise, and by indulging in it you will open a place in your armour of which your adversary will certainly avail himself, if he knows his work better than you do.

Now comes the time for putting in any formal evidence, documentary or otherwise, which is necessary in order to give you a *locus standi*. Then follow the witnesses as to facts. Call them

in the order which you have previously decided upon. There will be no objection to your putting leading questions on the formal points as to name, address, &c., and probably your opponent will not oppose your carrying the same style of examination still farther, until you come to the really material part of the case; then be careful to avoid a protest as to your leading the witnesses. If the examination refers to an indictable offence the magistrates clerk or his assistant must take down the evidence in detail, and the best thing you can do is to watch his pen, so as to be ready with your question at the proper moment. Otherwise you will get an indignant protest from the clerk that you are going too fast, or a pathetic appeal from the bench to proceed a little faster. These are small matters, but alertness in such things helps to distinguish the master of the craft from the clumsy apprentice and saves a vast amount of time and irritation.

In cases which are summarily dealt with many magistrates' clerks keep short-hand writers to take down the notes, (which, in such instances, the witnesses are not called upon to sign,) and thus a great saving of time is effected, for questions may follow each other in quick succession.

Keep your witness to the main question, and dont let him wander away into generalities or repetitions of conversations which occurred in the defendant's absence, or which, for other reasons, are inadmissible in evidence. There is something very unsatisfactory in an examination in which

the clerk of the court is constantly obliged to interpose in order to get the material facts, such as time, place, value, indentity, &c., recorded in due order upon the depositions.

Take care not to tender a witness who, legally speaking, is not competent to give evidence. This is a point of much importance, but a good deal of confusion prevails upon the subject even in the minds of many who are presumably well-informed. It is not within the scope of this work to deal fully with the subject (the law is to be found in 14 & 15 Vict. c. 99, and 16 & 17 Vict. c. 83, and is conveniently stated in "Oke," 11th Edition, Vol. 1). It may, however, be asserted that the general rule is that the complainant and his wife [or her husband] are eligible as witnesses (but neither husband nor wife is compellable to disclose communications made by either of them to the other during marriage). On the other hand the defendant or his wife [or her husband] cannot give evidence except in certain cases. These exceptions are increasing with the proportions of the statute book. Amongst the statutes which create such exceptions may be mentioned the Employers and Workmen Act, 1875, the Conspiracy and Protection of Property Act, 1875, the Liquor Licensing Acts, and the Army Discipline and Regulation Act. Under the Sale of Food and Drugs Act, 1875, the defendant may tender himself or his wife to be examined as a witness; any person charged with an offence against the Act passed in 1878 for the prevention of accidents

by threshing machines may, on his own application, be sworn and examined as a witness (this Act says nothing about the defendant's wife). The Contagious Diseases (Animals) Act, of the same year contains a similar provision. Under the Summary Jurisdiction Act, 1879, any person making default in respect of a civil debt (as defined by section 6) may be summoned and examined on oath. The same Act makes the defendant an eligible witness where the application is for sureties to keep the peace. It is sufficient to mention the foregoing exceptions in order to show the advantage which the advocate may lose for want of looking up the subject.

There is another point in connection with the examination of your own witnesses which is sometimes exceedingly embarrassing, viz., how to deal with a witness, who, contrary to expectation, proves adverse to your case. It is certain that you cannot bring general evidence to discredit him, and it is doubtful whether it is competent to you to show that he has made at other times a contradictory statement. (See *Roscoe's Digest of the Law of Evidence in Criminal Cases.*) At any rate you should be chary of asking permission to treat him as hostile. Mere reluctance or shiftiness on the part of the witness is not sufficient to justify such an application; and the permission, if granted, is apt to remind one of the gift of a white elephant. What will you do with it?

Some young practitioners are prone to get angry with their witness, and protest that he is

hostile directly they find a little difficulty in managing him. This course will very likely call forth the observation that he is giving his evidence very fairly, or, from the witness, himself, that he does not understand what you are asking him. Matters will not be mended by your repeating your question with the prefix: "Now, sir!" or some such threatening admonition. It will be better to try him on "another tack;" and, if then he is refractory or evasive, the court will probably call him to order and will regard him as hostile whether pronounced to be so or not. It is of no use to threaten the man with condign consequences, for the magistrates rarely care to exercise their power of committing a witness, even when it is clear that they possess it, which does not always happen.

Where, from the nature of the charge, you can anticipate a difficulty with your witnesses you may sometimes guard against or, at least minimise the results. Take the case of a man charged with receiving regimental necessaries from a soldier. The penalty is a fine not exceeding £20, &c. The chances are that the soldier, who is *particeps criminis*, will fail you at the last moment, but if you have laid an alternative information for "being in possession &c.," you will probably secure a conviction, though the fine is smaller, than if your evidence had sustained the greater charge.

But, even if your witness succeeds in breaking down your case, try to take it coolly. Command

of temper under trying circumstances is one of the most important lessons for an advocate to learn and if a man lacks the power of showing this, he will find a great deal of difficulty in getting on as an advocate. The good-tempered and persuasive man will often be more successful than the advocate who, though more gifted, is cantankerous. When it comes to your opponent's turn to deal with your witnesses, don't be in a hurry to take objections; leave that to the court as much as possible. Lay magistrates dislike constant objections, especially if they are of very technical character, and they are frequently at a loss how to decide between the contending parties. Above all do not be betrayed into shewing that overmastering anxiety for a conviction which sometimes induces police officers and others to endeavour to exclude anything that may tell in favour of the prisoner. Let the man have a fair chance.

In re-examining your witnesses avoid the common error of going over the same ground again with the view of getting the evidence emphasized. Unless your adversary has really succeeded in damaging the testimony upon some material point, it is better to leave it alone, but in any case, do not afford the opportunity for a protest that you are asking questions upon something which does not arise out of the cross-examination.

Sometimes a weak opponent will have opened up a vein which you, in your examination in chief, were precluded from touching. It may be the very point which it is important in the

interests of the prosecution to make clear, but which you did not see your way to bring out. If so, now is your time, for, your opponent having rashly introduced the subject, you are at liberty to follow it up.

Before telling the bench that "that is your case," *i.e.* that it is closed, consider if you have really completed it, and whether it is not requisite to ask permission to recall a witness upon any particular point.

If the prisoner, or accused person, is defended, the address of his advocate will now follow. What I have already said with regard to the opening address of the prosecuting solicitor is partly applicable also to the speech of the defending advocate, but in nine cases out of ten the task of the latter will be infinitely more difficult.

Method is even more important in the defence than in the prosecution, but the temptations to depart from it are greater, since you must of necessity regard the case in a double aspect. Do not forget that persuasion is more effective than denunciation, and that close reasoning prevails where strong language will be of no service. Begin quietly and instead of pitching the voice in one level key which fatigues the hearers almost as much as it does the speaker, endeavour to modulate your tone from time to time.

Where there has been a good deal of evidence and the main issue has become to some extent obscured, it is desirable to remind the bench of what the charge really is and of the ingredients

necessary in order to sustain a conviction or a committal as the case may be. Have the conditions precedent been complied with, or are there any doubts as to the law applicable to the circumstances of that particular charge? You can then deal with the evidence adduced in support of the prosecution, and point out its shortcomings, if there are any, besides referring to those justifying or extenuating circumstances which the laws of probability may entitle you to put forward on your client's behalf. Here it may be stated how you propose to contradict or explain what has been said on the other side: but it will be better to open only in general terms what your own witnesses are going to prove; if you go into particulars the chances are that you will become tedious, and, not only that, but when your witnesses come into the box their evidence may not entirely correspond with what you have previously stated, and thus you will be convicted of blundering of the worst type. Finally, if your client's position and general character justify comment you may say a word or two on the subject.

The fact that a man has been in Her Majesty's service for a long period with credit to himself, or that he has held offices of responsibility or even carried on business in a particular place with ostensible respectability for many years, may often help to turn the scale in his favour; because a presumption, but, remember, it is only a presumption, will be raised that such a man would not commit the offence charged against him. But references of this kind must be used with

discrimination, or they may defeat the very object which you have in view. Some advocates are always ready to assert that their client is a most respectable man. This may please the client, but it does not always help him out of his difficulty, and it sometimes exhibits a poverty of idea and resource on the part of the gentleman who pleads his cause. It must not be supposed that I am laying down in outline the only mode of conducting a defence. All I venture to do is to throw out suggestions based upon experience and observation of the system which is in many instances most successful or effective.

It is not always the best speech (best, that is, for attaining the object in view), that reads best in the newspaper. Reports of proceedings in local courts have necessarily to be condensed very considerably, and one can scarcely expect the average reporter to be an expert in dealing thus with arguments of mixed law and fact. Sometimes a fairly good speech will be made utterly ridiculous in print, not from design on the reporter's part, but from carelessness or incapacity on the part of the person who prepares the copy for the press. In one instance a country reporter made an advocate say that the act of the prisoner amounted either to murder, manslaughter, or *homicide*. Now as the prisoner had undoubtedly killed a man this did not read like a very clever argument, but the reporter had omitted the word "excusable" before "homicide," which made a considerable difference.

Sometimes, too, the speech of a really indifferent speaker reads remarkably well; but when this

occurs one's suspicions are apt to be aroused that the speech has been "revised" on good authority. I was struck not long ago with an example of this kind of thing. The advocates engaged in the case were by no means evenly matched. On the one side appeared a man whose education, to use the mildest term, was incomplete. His opponent, on the contrary, was familiar with his art, and gifted with exceptional powers of advocacy. Those who heard their speeches would never have dreamed of drawing any comparison between them, the contrast was too obvious. Yet, will it be believed? according to the report of the proceedings which subsequently appeared in the newspapers, the contrast was entirely reversed. The grammar of the uneducated speaker had been polished up, the h's were of course found in their right places, the sentences were smoothly rounded off, and the general effect was excellent, whilst, on the other hand, the man who had made a really good speech cut but a very indifferent figure in print. His remarks were so condensed or deleted as to be almost unintelligible, the best points being slurred or entirely excluded. Here the reporters had, as usual, done both more and less than justice. This, however, is merely by way of illustration.

The verdict is the thing and no amount of revision in a speech, even if it is justifiable to avail yourself of the opportunity, can help to influence this. Let me again remind you that the style of argument which will avail you with

one class of magistrates will not serve your purpose with another class; but no matter who or what they may be, it is only by using your opportunities of learning the modes of thought of different men, influenced as they are by their occupations, religious opinions, local surroundings and so forth, that you can acquire the knack of touching the right chord at the right moment. Tact is everything. Fancy asking a bench of magistrates to throw away their pet ideas upon a particular subject. Yet this is what I once heard a young advocate boldly propose to the five or six justices whom he was addressing. It might perhaps have been desirable that they should do what was asked of them, but the mode of seeking to get it done which the advocate adopted was scarcely likely to be successful. Besides, even if you believe that judges, assumed to be impartial, have pet notions, you have no right to say so. Not long since a solicitor was speaking to me of a professional brother who was both a clever lawyer and an unusually able advocate, but, said my friend, "He always manages to get the court against him." Every magistrate is entitled to respect by reason of his office, if on no other ground, and by showing that deference which is becoming in you and acceptable to him you will most likely secure courteous and considerate treatment at his hands, without which an advocate will find it very up hill work to serve his client.

Some justices of the peace are of course disposed to be more arbitrary than others. A justice

of the peace for a borough is often more patient than his brethren who are on the commission for the county.

A solicitor who has become well known in a borough police court where, by reason of local associations, he finds an even indulgent court, must expect rather different treatment if he is called upon to appear for the first time before a county bench in a remote district. In such places the justices are in the habit of getting through their business very quickly; they have perhaps to drive a considerable distance to their homes and they do not wish to be late for luncheon. Cases in which solicitors appear before them are comparatively rare, and when one does come he may possibly be regarded as a nuisance.

An old county magistrate once said to an advocate, across the table, at the conclusion of the case which was one of exceptional difficulty. "You know, we think we can manage very well here without solicitors." It is your business to convince such gentleman that you have something to say which is worth their attention.

If you are called upon to take a case away from your usual sphere, always endeavour to ascertain who and what the justices are.

I know of a solicitor who was so unfortunate or unwise as to get into conflict with a county bench before which he was appearing for the first time. There were several magistrates, but he did not know anything about them. It turned out that one of them was a Duke, who was experienced in

public business, but, worse than that, another of them was a Queen's Counsel (and an experienced recorder to boot). I need not say that that young solicitor got the worst of it, and spoilt his chances of practising as an advocate in that particular district. The advocate who provokes what the papers delight to call "a scene in court," may excite and interest the more vulgar portion of his audience, but people whose judgment is worth considering will be sure to shake their heads at him.

Of course there are times when it is necessary to be firm and even persistent, but you can do this without being boisterous or resorting to rudeness.

You will very easily discover who is the ruling spirit upon the bench. It may happen that he is a magistrate experienced at quarter sessions, and, if so, he will probably require you to keep very much to the point. If, however, your arguments can be presented in such a form as to carry him with you, you need not fear his being over-ruled by the majority, whose prejudices may be greater but whose knowledge of the law and its principles is decidedly less than his. I remember an instance in which this was strikingly illustrated. It was a charge of cruelty to an animal. There were three justices upon the bench, two of whom were for a conviction, the third, who was a deputy chairman of quarter sessions, was for a dismissal. The two stood out at first, and the third rose and left his brethren to confer together. In the

result, however, they had not the courage of their convictions and yielded to the opinion of the more experienced and *stronger* magistrate.

It is unnecessary to say anything about the examination-in-chief of the defendant's witnesses as to facts. These must be dealt with upon the same general principles which I have ventured to suggest when speaking of the evidence for the prosecutor or complainant. What you have to do is to bear in mind, if you are defending, exactly the point upon which their evidence is required, and to keep them to that point as closely as possible. If there is to be a committal, and if it is necessary and expedient to call witnesses for the defence they should be called now, so that their expenses may be allowed at the trial in accordance with sections 3 & 5 of 30 & 31 Vict. c. 35 (known as Russell Gurney's Act). It is for the justices to decide if the evidence tendered is material or tends to prove the innocence of the accused person and if they think otherwise they will refuse to bind over such witnesses to appear at the trial. Of course witnesses as to character cannot be bound over in this way, and such witnesses cannot be called until the trial takes place.

If the case is within the summary jurisdiction of the court you can of course call witnesses as to character, but do not produce them unless their testimony is pretty sure to carry weight with the justices. It is unquestionable, however, that many a man has been saved from conviction almost entirely by evidence as to character. My

readers may remember a case of a most painful type which was tried a year or two ago in the Central Criminal Court. The defendant was a solicitor; he could produce no evidence to repel the statements of the witnesses for the prosecution, but a long array of distinguished persons was forthcoming to bear testimony to the accused's high character.

Amongst these witnesses was Lord COLERIDGE, the present Lord Chief Justice of England. The prisoner was acquitted.

In another case, speaking of an officer whom he was defending upon a somewhat similar charge, a barrister whose experience in such matters is perhaps larger than that of any of his brethren said: "If he goes for trial you must call witness after witness as to character. The jury won't like to convict a man who can be spoken of so highly."

This seems to be the fitting place for a few words about cross-examination, whether it be of witnesses for the prosecution or of those called for the defence. It would be impossible within the limits of this small work—even if I possessed the requisite qualifications—to deal exhaustively with this difficult subject. Nor indeed could any writer, however great his experience or qualifications, furnish the aspiring advocate with a set of rules which would guide him in all circumstances. Doubtless some general principles can be accepted as reliable, but as no two cases are exactly alike, so a system which will stand you in good stead in

one instance will entirely fail you in another; the mode which will answer the purpose with one witness will be utterly inappropriate when you are dealing with a man of another type, and so on, *ad infinitum*.

Experience and careful observation may help very much to make a man a good cross-examiner, but, even where opportunities for these have existed for years, you will find many an advocate almost as far from excellence in this particular art as when he first began his career. He may have learnt some of the stalest tricks and devices, and he will get in the habit of using these from time to time with the utmost complacency. If this be so, it follows that in addition to some natural aptitude for the art, the student should be ready and anxious to learn of others, and not commence on his own account too ambitiously. Here ignorance may indeed be bliss but it is not folly to be otherwise. You may not be able to reach perfection, but you may at least teach yourself to avoid that fatuous blundering which underlies so much of "cross-examination," falsely so-called. By study of your fellows aided by the instinct of the moment in dealing with an adverse witness, you will be able to some extent to "put yourself in his place," *i.e.*, form an opinion as to how in particular circumstances and with particular motives you would act if you were the witness instead of the witness being somebody else.

Such advice as I can give must be negative rather than affirmative. I will suggest to you how *not* to do it.

Don't assume that the witness is a wicked man who has the express purpose of committing perjury or of working the ruin of your client. Now and then an imperative question will as it were force an answer from him, but in the general way you should at least be civil, not merely because it is likely to answer your purpose but because it is to be assumed that he has come forward—whether it be compulsorily or voluntarily —to speak the truth and as an act of public duty. It is a marvel that a long-suffering public have not long since risen in rebellion against the system under which they are harassed, flurried, tortured, worried, bullied, slandered, snubbed, and sneered at when its members assist in the course of justice in the courts of their free and enlightened country.

Remember that many a witness will fail to give his evidence clearly and consistently from sheer incapacity, the novelty of the situation, nervousness, defective memory, or scores of other causes far removed from any fell intent of doing wrong, whilst some, Oh! my professional brothers, will find it difficult, if not impossible, to extract the meaning of the long-winded and verbose inquiries which perhaps represent your notions of examination.

With the average witness nothing is gained by pointing out exultantly a minor discrepancy or contradiction not material to the issue. How often an unhappy witness is asked peremptorily if he will swear that a particular word was used in a conversation which occurred perhaps months before-hand. But just consider how few men

there are who could repeat *verbatim* a dialogue which took place perhaps a day, or only an hour or two previously; yet this is what nearly everybody is expected to do if he finds himself in the witness box. I think that as a rule the witness who professes to remember everything is far more open to suspicion than the man who speaks less positively. With the former class you may successfully exercise some pressure as to particular language, but the latter class should be treated after a different fashion.

We are all familiar with the newspaper report which states that a particular witness was cross-examined severely and at great length, but that his evidence in chief was not shaken in any particular. What a comment on the cross-examining advocate! I remember seeing the report of an unseemly wrangle between two learned counsel who were attending a local inquiry. The one was a junior, the other a Q. C. of high standing. The former after wearily pegging away at an adverse witness without producing any result, called forth a muttered protest from the opposing barrister. "But, I am trying to get at such and such a fact," exclaimed the junior. Then you are a ——long time about it," was the retort. "Such language from a Queen's Counsel and member of parliament!" said the dismayed junior, and no doubt it was highly improper, but perhaps there had been great provocation.

Take a case of common assault, and assume that a witness has sworn positively that he saw

your client strike the complainant full in the face. Surely if you had to cross-examine, you would not begin by asking such a question as the following: "Now sir, will you really swear that my client struck you in the face?" Of course he will swear it; he has sworn it, and probably it is true, and by asking such a question you are not merely shewing the poverty of your weapons of defence, but you are actually giving your adversary the opportunity to emphasize the charge by bringing the main issue prominently forward once more. Yet this is the way in which many an incompetent advocate opens his attack,—attack it cannot be called; it is simply walking up to the enemy's guns.

But although the man's statement as to the blow given is the truth it may probably not be the whole truth, and, mark you, *that* is what he is sworn to tell. What you have to do, then, instead of marching straight up to the battery, is to work round the main point, little by little, and so in time, undermine his position. In the result you may be able to elicit that that blow was not the first, that he, the witness, was not present all the time, or that the complainant was really the aggressor, or that there was a general disturbance, and so forth.

Where it is essential that the witnesses' antecedents should be made known, great caution should be exercised. A man who has been in trouble ought not to have the circumstances raked up against him without good cause. Such questions are not often favoured by the courts,

and they are dangerous to your own interests, unless you are prepared to show the accuracy of what you insinuate.

Doubtless where the prosecution is mainly supported by the evidence of one person whose credibility may reasonably be impeached, it will be your duty to act accordingly. Even if in all cases you are not entitled to rebut the answer given, the desired result may be served by simply calling into court the person who could prove such a fact if it were admissible, and thus bringing the two face to face. The witness may indeed still persist in a denial, but the court will have a good opportunity of judging from his manner whether he is to be believed.

Everybody knows that no witness is bound to criminate himself, *i.e.*, to say anything which will subject him to a criminal prosecution. It is often difficult to know on the spur of the moment whether a particular answer would have that effect, but that is for the court to decide either with or without such assistance as you can offer.

You can scarcely expect to extract satisfactory answers from a witness who exhibits strong bias in favour of your opponent, but you may find it serve your purpose almost as well if you gently lead him on (it must be gently done or he will suspect your design), to exhibit himself in his true colours without any mask or pretence. Give him enough rope and he will hang himself.

Be earnest; for if you do not appear to believe in your own case how can you expect others to

believe in it? Yet remember that earnestness is a very different thing from fierceness. A humourous question now and then, or a ready comment, helps to relieve the strain of cross-examination and to put every one in good temper. But in this particular moderation is essential. The magisterial countenance does not relax very readily, for dignity has to be preserved. Their lordships of the superior courts are far more fond of a joke and prone to indulge in one than are the judges of inferior tribunals.

There is, too, the chance of the laugh being turned against you by a witness who is either shrewd or simple. When this happens you are bound to take it in good part. Unless you are ready with a really effective retort, you will do well to bear the punishment silently and "come up smiling." It may be your turn presently. It is difficult to resist an effort at retaliation, but there can be no doubt that a laboured rejoinder is infinitely worse than none at all.

Avoid a feeble play upon words, or any approach to what Sydney Smith calls the lowest form of wit. The advocate who is perpetually facetious will not find favour with the court. The business in hand is generally serious, and it should in the main be dealt with seriously. The practice in courts of summary jurisdiction does not allow the defendant's advocate to sum up the evidence for his client, and therefore it is all the more important that he should make

good use of the one opportunity which is afforded to him of making a speech. Of course legal points may arise and be argued at any stage of the proceedings, but that is quite a different matter.

Nor has the prosecuting advocate a right to "sum up," or "reply." Occasionally magistrates will allow him to do the one or the other where the prosecution is for an indictable offence and the evidence has been voluminous, or where there has been several remands. It is entirely a question for the discretion of the court, and you must expect to find a great unanimity of opinion upon such a subject through the whole magisterial body, whether its members be paid or unpaid, or on the commission for a borough or a county, the simple reason being that, by the time the evidence is finished, the court has had quite enough of the case, and will require some very good reason for listening to an extra speech without any material guarantee that it will be a good one.

The only instance in which I have known a "reply" allowed was where considerable doubt existed as to whether a prisoner should be committed on a charge of murder or for manslaughter only. In nine cases out of ten the magistrate will have made up his mind whether to commit or not, long before this stage has been reached. If he wants to hear anything further it can only be because he is in doubt whether the evidence jus-

tifies a committal, or for such a reason as I have illustrated above.

What I have hitherto written has been based upon the assumption that your case passes through the ordinary steps of development until it reaches its end, so far as you are concerned: but it should be remembered that it may collapse at almost the first stage. Some question of jurisdiction or technicality may nip it in the bud. Objections which arise upon the very face of the proceedings—I am speaking now from the defendant's point of view—should be taken at the outset. They are essentially "preliminary." Do not, however, be tempted to raise frivolous points. The law gives magistrates large powers of amending informations where there are defects rather of form than in substance. You may sometimes point out a defect with the greatest propriety, but without making it a subject of contention. It will, at any rate, show that your adversary has not been so careful as he should have been. If you have an objection that is really worth urging be careful to express it clearly and concisely, for the layman is apt to feel that contempt for technicalities which springs from want of knowledge. He is naturally averse to accepting a contention which he finds it difficult to understand, and is likely to consider it as frivolous and tending to impede "substantial justice as between man and man." There is an ouster of the justices' summary jurisdiction where

property or title is in question. This is a qualification which is raised by the common law in regard to all penal statutes, but there are exceptions of the kind expressly created by statute. I can do no more than mention one or two of such exceptions. Section 52 of the Malicious Injuries to Property Act (24 & 25 Vict. c. 97) provides that nothing therein contained shall extend to any case where the party acted under a fair and reasonable supposition that he had a right to do the act complained of. Again, under the Offences against the Person Act (24 & 25 Vict. c. 100, s. 46), it is provided that nothing therein contained "shall authorize any justices to hear and determine any case of assault or battery in which any question shall arise as to the title to any lands, tenements, or hereditaments, or any interest therein or accruing therefrom, or as to any bankruptcy or insolvency, or any execution under the process of any court of justice." The same section declares that the justices shall abstain from any adjudication in a case of assault or battery when it has been accompanied by any attempt to commit a felony, or they shall be of opinion that from any other circumstance it is a fit subject for prosecution by indictment. In such instances they are to commit the accused for trial. While referring to this statute it may be useful to mention sections 44 and 45. The former section enacts that where the justices dismiss a complaint either for common assault or an

aggravated assault (for definition of aggravated assault see section 43) on the ground that the offence was not proved, or that the assault or battery was justified, or so trifling as not to merit punishment, they shall forthwith make out a certificate of such dismissal and deliver it to the accused party; and, by section 45, any person who shall either obtain such certificate, or who has been convicted and paid the penalty (or suffered the imprisonment, &c.), shall be released from all further or other proceedings, civil or criminal, for the same cause. As a rule it will be found that the magistrate's clerk will not take the trouble to make out the above mentioned certificate unless it is asked for.

Returning for a moment to the question of jurisdiction, I would advise the advocate not to be in a hurry to raise the question, as the mere allegation of a right is not sufficient to oust the justices' authority. There should be some evidence to satisfy them that there is fair and reasonable ground for the contention. But even if no evidence is produced, the justices may hold that the claim is made "*bonâ fide* and with a show of reason." If they decide that it is not so made, the Queen's Bench Division may review the decision.

In addition to what has been already said on this subject, I would mention the desirability of considering whether the proceedings are taken within the time limited by statute or otherwise.

The question of local jurisdiction may also arise, but the chances of any objection arising on this head have been very much curtailed by sections 45 and 46 of the Summary Jurisdiction Act, 1879. For instance, by sub-section 1, (sec. 46) where the offence is committed in any harbour, river, arm of the sea, &c., which runs between or forms the boundary of the jurisdiction of two or more courts of summary jurisdiction, such offence may be tried by any one of such courts. In connection with this branch of the subject may be mentioned the Territorial Waters Jurisdiction Act, 1878, which was passed in consequence of the decision given by the Court for Crown Cases Reserved in the celebrated case of *Reg.* v. *Keyn*, which arose from the collision between the German vessel *Franconia* and the English steamer *Strathclyde*.

The case having passed through its various stages, the justices will give their decision, and the advocate must cultivate the habit of accepting it with equanimity. To be guilty of a petulant act or word because the verdict is against you is in the worst possible taste. It is to be assumed that you have done your best for your client, and no man can accomplish more. Equally objectionable is the self-satisfied smile or the boast of the man who has carried his point. Remember that what is your adversary's fate to-day may be yours to-morrow. It may seem almost superfluous to mention such a subject, but most candid men will admit that

faults in this respect are not uncommon. Perhaps many of us can remember occasions on which we ourselves have transgressed in some such particular.

It may be, however, that a sense of duty may render it necessary for you to carry the matter further, if that be possible. In most cases it is not possible, for there is no general right of appeal. It only exists where expressly given by statute. The enactments as to the right of appeal and the mode in which it is to be exercised are numerous, and differ considerably. You must, therefore, consult the Act applicable to your particular case both as to the notice required, the mode in which recognizances are to be given, and so on. It should be pointed out, however, that a very important amendment has recently been made in the law with regard to appeals against summary convictions. Section 19 of the Summary Jurisdiction Act, 1879, provides that where in pursuance of any Act, whether past or future, a person is ordered by such a court to be *imprisoned without the option of a fine*, as therein mentioned, and such person is not otherwise authorized to appeal to a court of quarter sessions and did not plead guilty, he may appeal against such conviction or order; but there is a proviso that the section shall not apply where the imprisonment is adjudged for failure to comply with an order for the payment of money, for the finding of sureties, for the entering into any

recognizance, or for the giving of any security. The procedure on appeals under the Act will be found in section 31.

Some few statutes require the convicting magistrates at the time of conviction to make known the right of appeal, but in the general way you must find it out for yourself, and you may be sure that the policy of the law is not to encourage delay in such matters. Take, for instance, an appeal against an order adjudging a man to be the putative father of a bastard child. The defendant must give notice of appeal within twenty-four hours after the adjudication. In such a case, therefore, if there is any likelihood of an appeal being resorted to, the notice should be prepared beforehand and served upon the woman before she leaves the precincts of the court. It is true that this particular notice need not necessarily be in writing, but no experienced practitioner would think of giving a mere verbal notice.

Besides an appeal to quarter sessions, which is in the nature of a re-hearing on the merits, the Act 20 & 21 Vict. c. 43, provides that after the hearing or determination of any information or complaint which the justices have power to determine in a summary way, either party, if dissatisfied with the decision as being erroneous in point of law, may apply to them within three days to state and sign a case for the opinion of a superior court. In the general way it is con-

venient to ask for the "case" immediately after the justices have given their decision, and sometimes, if the point is one which all parties are desirous of having decided authoritatively, the solicitors on both sides will agree to waive all technical questions as to time, &c. In the absence of such an understanding there would often be a difficulty in complying with the requirements of the statute, as it allows so short a time for the preparation of the case, which has frequently to be perused and settled by counsel on both sides.

In applying for a "case" you should have your eyes open to the fact that whether the opinion of the superior court be favourable or adverse, considerable costs will fall upon your own client. Although questions thus raised for decision are frequently of the highest importance, the scale upon which the party and party costs are taxed is less liberal after the rate than in an action in the county court where the amount claimed exceeds £20.

Section 4 of the last mentioned Act allows the justices to refuse such an application, if they are of opinion that it is merely frivolous; but they shall, on the request of the appellant, sign and deliver to him a certificate of such refusal. The fee for such certificate is the moderate sum of 2*s*.

Where it is worth while to apply for a case and it is refused, it is certainly worth while to have

the certificate. An application for a case made by or under the direction of the attorney-general cannot be refused by justices. In the event of a refusal to grant a case, the appellant may apply to the Queen's Bench Division for a rule (see section 5).

Sometimes it may happen that the advocate will think it necessary to resort to, or rather to advise his client to avail himself of, the Vexatious Indictments Act (22 & 23 Vict. c. 17). Where it is desired to prefer an indictment for perjury, subornation of perjury, conspiracy, obtaining money or other property by false pretences, keeping a gambling house or a disorderly house, or an indecent assault, and upon hearing the charge the justice shall refuse to commit or to bail the person charged to be tried for such offence, the prosecutor may require the justice to take his recognizance to prosecute. No voluntary bill for any of the above offences can be presented to or found by any grand jury except under such conditions as the Act specifies.

The last mentioned Act must be read in conjunction with 30 & 31 Vict. c. 35 (before referred to as Russell Gurney's Act), which creates some material qualifications in the law as originally enacted. It is not within my province to refer to section 1 of the latter Act, but section 2 should furnish a very strong reason to the advocate for proceeding with caution, inasmuch as it gives power to the court before which any such indict-

ment as before specified, shall be laid if the person accused shall be acquitted thereon, to direct the prosecutor or other person at whose instance the indictment shall have been preferred to pay the costs of the accused person. You will, therefore, carefully explain this responsibility to your client, if he be the prosecutor, before advising him to insist upon being bound over to prosecute, or in the result he may have good cause to blame you.

There are, of course, a great many offences other than those mentioned in the Vexatious Indictments Act in respect of which indictment may be secured by the means of "voluntary bills," and it was to remedy to some extent the abuses which arose through charges being thus preferred, *ex parte* and without notice to the accused, that the Act 22 & 23 Vict. c. 17 was passed.

I cannot deal here with the grand jury system, but it may be admitted that the existing means of preferring voluntary bills may be used as a strong argument in favour of its abolition or amendment. The use which an unscrupulous man may make of the opportunity thus afforded to him was strongly illustrated, and commented upon, when, not long since, a well known alderman of the City of London was, through the instrumentality of a "voluntary bill," placed upon his trial on a charge of libel. Had there been a preliminary inquiry before a magistrate there can be no doubt that he would have had no difficulty in answering

the charge and clearing his character publicly without going through the painful ordeal of a trial by jury. On the other hand, it should not be hastily assumed that the system has nothing to recommend it, and I will mention an example as being distinctly relevant to the duty of an advocate who has reason to be dissatisfied with a magisterial decision, and as illustrating also the confusion which sometimes prevails as to whether certain conduct involves merely a civil liability or punishment as a crime.

A collector was charged with embezzling his employer's money. There were several acts of embezzlement and they were discovered by the employer at different times. The total sum misappropriated was considerable, and the employer, instead of commencing a prosecution, made terms with his servant with the view of getting re-payment by instalments. Probably he received money on account of the deficiencies, but, at any rate, he was ultimately advised to prosecute and there was an examination before a justice, who, after hearing the cross-examination, held that the prosecutor by his conduct had made the matter simply a debtor and creditor account, and that his remedy was in a civil court for debt. The prosecuting solicitor contended that if a crime were established, by the evidence, the mere fact of negociaciations for a settlement or compromise, or even if the prosecutor had been guilty of compounding a felony would not make the prisoner's act anything

less than a crime. The charge, however, was dismissed. The prosecutor subsequently preferred a voluntary bill at the assizes and the accused was convicted and sentenced to five years' penal servitude.

One thing is certain, that a solicitor who resorts to this mode of procedure must expect to have his conduct severely criticized. The judges, the public, and the press are never backward in censuring him, sometimes justly, sometimes unjustly, for it is often forgotten that the solicitor himself may be misled by a positive and importunate client, and thus may be induced to take measures which, in the result, he may admit to have been unjustifiable. Be this as it may, the solicitor has great need to be cautious in these matters, and the same observation applies to the compromise of criminal proceedings which have been commenced before justices. There are many minor cases, such as disputes between husband and wife, quarrels amongst neighbours, &c., in which it is desirable, upon broad grounds, that there should be a settlement without fighting them out. But, even here, the suggestion for an amicable understanding comes better from the court than from the advocate, though the latter will generally do well to facilitate the course proposed: but, apart from this, there must be no setting the criminal law in motion for private ends or with the view of forcing terms. It is not always possible to compel a client to go on with

proceedings which have been commenced in good faith so far as you are concerned, but which he may, through pressure of friends, pecuniary considerations or other influences, desire to abandon. If this be so you may be placed in a very awkward position, and you will do well to be as candid as possible with the court. Fortunately you will now be able to refer your client to the "Prosecution of Offences Act, 1879." By section 2 the director of public prosecutions is to be empowered by regulations made under the Act to take action where the refusal or failure of a person to proceed with a prosecution appears to render such a course necessary in order to secure the due prosecution of an offender. There are saving clauses as to the rights of private prosecutors. Whether the Act is made as useful as it might be made, is not for me to say. Whether the "director" fulfils all that was expected in the long demanded "public prosecution" is certainly a question upon which some difference of opinion exists. What with the solicitor to the treasury, the director of criminal investigations, and the director of public prosecutions the public is apt to get confused.

At any rate it may be said that the Act is excellent in intention, and it might possibly be made a great deal more effective than it is at present. There is only one other matter to which I will refer in this division of my subject, viz., the binding over the prosecutor and witnesses, where there has been a committal, and the bailing of the accused.

It will be for the prosecuting solicitor to see that the recognizances are duly taken though the duty will be actually performed by the clerk of the court. A witness refusing to be bound over may be committed in default. The ceremony of binding by recognizance may occasionally become a farce. I remember an instance of the kind; it was a charge of murder committed on board an Italian vessel in an English harbour. The witnesses were nearly all Italians. They were "bound over" to appear and give evidence at the assizes, but long before that time arrived they had sailed far across the seas, and, of course, had left nothing behind them in the shape of lands, tenements, goods, or chattels upon which estreated recognizance could be levied. A father may be bound for the appearance of his child, who is a minor, or the husband for the appearance of a wife, at the trial. When no one is available under such circumstances the witness who is a minor or a married woman may enter into a personal recognizance to attend and give evidence "on pain of imprisonment." By 11 & 12 Vict. c. 43, s. 16, before or during the hearing of any information or complaint one justice or the justices may discharge the defendant upon his entering into a recognizance, with or without surety or sureties, conditioned to appear on the adjourned hearing. Where it is an indictable offence the justice or justices may order a remand for any period not exceeding eight clear days, and they

have the like discretion as to bail as in summary proceedings.

The accused is not entitled to a copy of the depositions until the case is completed, nor is he entitled to such copy where the charge is dismissed.

The law as to bailing the accused after the magisterial examination will be found in 11 & 12 Vict. c. 42, s. 23. Justices are sometimes surprised to find that bail is compulsory in such serious charges as conspiracy, indecent assaults, &c., but they can generally secure the same result as if it were discretionary so long as they are empowered to fix the amount.

Probably many justices are not aware that to require *excessive* bail, so as to amount to a denial of bail, is a misdemeanor for which the remedy is either by action or indictment.

The Summary Jurisdiction Act, 1879, contains a provision with regard to recognizances which should not be lost sight of. By section 9 it is laid down that "Where a recognizance is conditioned for the appearance of a person before a court of summary jurisdiction or for his doing some other matter or thing to be done in, to, or before a court of summary jurisdiction or in a proceeding before a court of summary jurisdiction, such court, if the said recognizance appear to the court to be forfeited, may declare the recognizance to be forfeited, and enforce payment of the sum due under such recognizance in the same manner as if the sum

were a fine adjudged by such court to be paid which the statutes provide no means of enforcing, and were ascertained by a conviction: provided that at any time before the sale of goods under a warrant of distress for the said sum, the said court of summary jurisdiction, or any other court of summary jurisdiction for the same county, borough or place, may cancel or mitigate the forfeiture upon the person applying and giving security to the satisfaction of the court for the future performance of the conditions of the recognizance, and paying or giving security for payment of the costs incurred in respect of the forfeiture, or upon such other condition as the court may think just."

This section, it will be observed, gives a very large and beneficial discretion to courts of summary jurisdiction. In a recent case one of the metropolitan police magistrates exercised the new power conferred upon him. A man had been remanded upon a charge of perjury, and two persons became sureties for his appearance. The accused absconded and upon a representation of special circumstances being made to the magistrate he agreed to mitigate the amount payable by the sureties under their recognizances, and allowed each of them a month in which to pay the reduced sum. Had the accused absconded *after* committal the section would not have applied, for, apart from the foregoing enactment, no judge or magistrate has power to remit recognizances when once an

order has been duly made to estreat them, nor can he reduce the amount. The power to do either is vested only in the treasury.

Probably future legislation may confer upon courts, having jurisdiction over indictable offences, a discretionary power similar to that which is now possessed by the courts of summary jurisdiction. The old Act 7 Geo. 4, c. 64, s. 36, which at present governs the procedure where recognizances are estreated might certainly be improved upon.

PART II.

Actions in County Courts.

The advocate in a county court will perhaps find the legal atmosphere exceptionally trying. It is not so much one's own case or cases which are apt to fill one with a sense of weariness and distaste for the tribunal, as the cases of other people. To these, nevertheless, you are compelled to listen with such patience as you can command, for the list may contain a hundred or more plaints and there is no reason why your particular case should not be the ninety-ninth. Discipline is not so strictly enforced as it might be; the majesty of the law seems to be less respected than would seem desirable, the proceedings lack the solemnity and rigid decorum which prevail at *Nisi Prius*, and, more or less, in all superior courts. This state of things is to some extent unavoidable, for the "accessories" cannot be so imposing, and the officials of the court cannot be so numerous as in more important tribunals. It is the court of the people and was established in order that law and justice might be brought to their doors. Thus then, it is not surprising that "the people" should become familiar with its usages, and that familiarity may, in its turn, breed contempt. When one considers the smallness of the amounts in dispute in many of the actions, and the social

position of the majority of the parties, it is not surprising that some of these courts should be the scenes of much unseemly wrangling, many vehement denials and contradictions on the part of disputants—particularly those of the so-called gentler sex—who excel more or less in the art of vulgar vituperation. Lord Beaconsfield declared that invective was the ornament of debate, and if the same observation is applied to county court proceedings it must be owned that they are highly ornamented.

As I have intimated, the evil is to some extent incurable from the very nature of the people and the disputes with which such courts have to deal; but still something more might be done to enforce decorum. Possibly the judges become used to occurrences which are so common, and their feelings on the subject become blunted. Some judges certainly preserve far greater dignity in their proceedings than others seem able to secure, but on the whole the impression remains amongst the better classes that it is almost degrading to "go into the county court," and that they would put up with almost any loss or annoyance rather than seek redress there.

This reluctance may perhaps be explained now and then as being founded on a want of confidence in "county court law" as administered by the judges, but this alone would not entirely account for the feeling above indicated and which undoubtedly prevails very widely.

Perhaps, again, some persons may consider that

the unwillingness to go to law in the county courts is due to a want of confidence in the professional advocates who practise there; but I hardly think that is the case, for in all populous districts there are certainly a few solicitors who can command confidence as advocates. On the other hand it must be owned that much of the advocate's work in the county court does not deserve the name of advocacy at all. The examination of a witness on a long tradesman's account involving perhaps a few disputed items requires patience rather than any other gift, but no doubt that in itself is a sort of education. It will be obvious, however, that such remarks as I am about to make must apply chiefly to what are called "the fighting cases," which require some exercise of ability and skill, if they are to be properly handled. It may happen that out of a list containing eighty or ninety plaints there may be only two or three which in the phrase of the newspapers "present features of any interest," but those two or three will in a measure redeem the proceedings from the dead level of monotony and insignificance.

Although fifty pounds is the largest sum which, on the common law side, and in the absence of consent to jurisdiction, can be claimed in the county court, the legal questions which arise from time to time are necessarily of a highly interesting and important type, seeing that year after year the business which can be dealt with by the county court judge, and over which he has sometimes

exclusive jurisdiction, is increasing. Statute after statute throws fresh duties upon him and the cry is still,—they come. I have touched upon this subject in my introductory chapter, and I hope that enough has been said to encourage those who need encouragement, not to turn their backs contemptuously on these courts, but, whilst recognizing drawbacks, which it would be foolish to conceal, to see also the increasing opportunities which they may and do furnish for improving one's qualifications, not merely as an advocate but as a lawyer.

Many of the suggestions which I have offered in the first part of this work will also apply to county court practice. Advocacy is in one sense the same in all courts, only it has to be exercised under different conditions. In county courts many formalities, inseparable from the business of criminal courts, are entirely absent; in fact it is impossible to imagine a form of legal procedure presenting greater simplicity than will be found here. There is no system of pleadings such as obtains, and so vastly increases the costs of proceedings, in the High Court of Justice. The county court rules encourage, and provide forms of condensed particulars, copies of which have to be filed when the plaint is entered, but the defendant does not plead at all, unless it be by giving notice of a statutory defence, or by filing a counter-claim or set-off.

In the general way, therefore, the plaintiff and his solicitor must be prepared for any and every defence which may be raised when the parties actually meet in court.

In some cases there is a statutory obligation to give notice of action, *i.e.*, before the action is commenced.

Interrogatories may be administered or discovery obtained by leave of the registrar on the application of either party, but costs cannot be recovered in respect of such interlocutory proceedings except where the amount in dispute exceeds £20, unless specially allowed. Only the solicitor generally concerned in the cause will be allowed to appear as an advocate. In the interests of the bar it has been provided that one solicitor cannot undertake advocacy in these courts upon the instructions of another solicitor; this rule is not in general made to apply where a solicitor who appears is the clerk of another professional man, but even then the theory is that the clerk must be acting generally in the matter.

Every solicitor must sign the roll of the court kept by the registrar before he acquires the right to appear.

The plaintiff's solicitor should remember that the judge has a copy of the "particulars of demand" before him, and it will be better to give him time to look through these instead of launching at once into an opening speech. Indeed it may be safely said that opening speeches are very rarely required, when you consider that the case is about to be tried by a qualified lawyer whom practical experience will enable to get rapidly at the gist of the case. If it is necessary to say anything at all by way of preface a few sentences

explanatory of the written particulars should be sufficient. The judge will doubtless afford you an opportunity of arguing any legal points as they arise, and even when they do arise it is a mistake to intervene in a hurry, for you will frequently find that your interference is superfluous. If the judge holds one view of the law and your opponent urges another, you may generally trust the former to prevail; of course if you see that he is wavering you must answer the objection, whatever it may be, and take care to do so, clearly and respectfully. The advocate who on seeing the judge apparently against him exclaims: "But, surely, your honour will not hold so and so," adopts a mistaken mode of seeking to convince the court although his case may be of the strongest.

In some cases it rests with the defendant to begin, the general rule being that the party upon whom lies the onus of proof is entitled to commence. The plaintiff, therefore, will necessarily begin in the great majority of actions, and he and his witnesses will be examined, cross-examined and re-examined as in other courts.

Whether the plaintiff's advocate can sum up his evidence where no witnesses are to be called on the other side, is a point upon which the practice of the courts varies. The judge may or may not permit a second speech by the same advocate, and the latter will be wise not to seek the permission unless in an action in which from special circumstances it seems really necessary in the plaintiff's interests to do so. In the hands of a really able

advocate, the advantage of summing up is undoubtedly very valuable, and by not claiming it save in cases of an exceptional character the preservation of the privilege will doubtless be best secured; for whilst on the one hand the judge with a long day's work before him will naturally wish to curtail the number of speeches, on the other hand he will probably regard the advocate's summing up as a piece of reserve machinery which may be advantageously used in special cases.

The defendant's solicitor will pursue the same course as regards the defence as his adversary has taken in conducting the plaintiff's case, except that in his speech he has to answer a claim instead of making one. When his witnesses have passed through the threefold examination, the action will have run its course and the judge will deliver his decision. Sometimes the defendant's advocate will be permitted to sum up so far as his case is concerned, and, if this advantage is extended to him, the plaintiff's advocate will be entitled to reply upon the whole case, and thus have the last word, the importance of which to a man who knows how to make use of it can scarcely be exaggerated, especially if, as may happen, the case is tried by a jury. Assuming that a jury (five in number) has been summoned at the instance of either party or by the order of the judge, it will be advisable at the outset to ascertain whether the judge will or will not allow you two speeches instead of one; because upon the answer to that question must depend the mode in which you

should deal with your case in addressing the jury in the first place. When the judge is unwilling to allow the extra speeches, it may be better (if he will let him speak later on), for the plaintiff's advocate to abandon his right of opening the case and simply to hand a copy of the particulars to the jury. By the aid of these if they are tolerably simple the jurors will gather the nature of the case and the issue before them as the evidence is unfolded. If the evidence is all on one side (which rarely happens) you will be on much firmer ground for the purposes of your address and far better able to attack your opponent who by his cross-examination will have been obliged to shew his hand. Or if the defendant calls witnesses you will be able in your reply to range over the entire case with all its *pros* and *cons*, and perhaps secure a verdict which is hovering in the balance, by bringing into prominence once more the evidence given on behalf of your client, and which has more or less faded into the background whilst the defendant's witnesses have been giving their version of the matter in dispute.

The jury must be unanimous in their finding, and any suggestion, even if it come from the judge, that you should consent to take the verdict of the majority should be rejected. You have no right to take a step which may destroy the last chance which remains to your client, even though by so consenting you may save time and prevent inconvenience. If after full opportunity for deliberation the jury are unable to agree they will be

discharged, and the cause will probably be tried over again at a subsequent court. In the meantime, however, terms may be arranged or the plaintiff may decide not to risk a second trial.

Many judges in county courts set their faces against the summoning of juries, except very occasionally, but, though, in general, the solicitor will do well to consider the prejudices of the presiding functionary, who lays down the law even when he does not decide the facts, circumstances may arise which will make it expedient, in spite of any such prejudice, to lay the facts before a jury. Of course there can be no absolute rule on such a subject; and even where the plaintiff does not demand a trial by jury, the defendant may think it advisable to do so; either party will have a right to summon one where the amount claimed exceeds £5, and upon making the application three clear days before the return-day. Sometimes, too, upon finding that there is a great conflict in the evidence offered in a particular case the judge himself will express a wish that the responsibility of deciding between the parties should be reserved for a jury, and the hearing will then be adjourned for that purpose.

An instance of that kind occurred not long since, and as it was a fair specimen of a fighting case, it may illustrate the procedure of these courts, and in some measure serve as a guide with more effect than mere abstract suggestions would do.

The action was brought to recover £24 and

some odd shillings, being a balance of money lent. Both the plaintiff and defendant had been fellow servants in a good situation. The defendant married a cab-owner, and her husband met with reverses; the plaintiff, who continued in the situation, had saved some money, and she yielded to her *quondam* friend's solicitations to lend her several sums from time to time for the benefit of herself and her husband. The loans extended over a period of four or five years, and there was one small repayment on account of the debt, which left the balance above mentioned still owing—according to the plaintiff's version of the case.

After some time the plaintiff also married, her husband being a licensed victualler, and they came to the same town in which the defendant and her husband were living.

The plaintiff did not tell her husband of the loan until some time after their marriage, and when he did hear of it he was angry, and made his wife write demanding a return of the money, a coolness having by that time sprung up between the parties. Nothing was done until some time afterwards, when the plaintiff and her husband consulted a solicitor, who wrote requiring payment of the amount, and threatening an action in default of settlement. No notice was taken of that letter; whereupon the action was brought, and came on for hearing. The judge soon saw that it was a question of oath against oath, and expressed the opinion that the action had better be tried by a jury.

This suggestion was of course adopted by both sides, and at a subsequent court the cause was proceeded with *de novo*.

In this case the judge intimated that two speeches might be allowed to each of the advocates, and thereupon the plaintiff's solicitor made a brief opening address to the jury, explaining the relative positions of the female parties to the action (both the husbands having been joined as parties also), and handed in a copy of the particulars of demand, which were certainly less complete than particulars ought to be. They were pretty much as follows :—

To sundry advances prior to September, 1877 - - - - -				£17	0 0
Ditto in October, 1877 - - -				1	0 0
Ditto in February, 1878 - -				13	0 0
				£31	0 0
By cash repaid on account	£1	10	0		
Ditto allowed as a gift -	5	0	0		
				6	10 0
				£24	10 0

The advocate did his best to explain the nature of the particulars, admitting that the plaintiff was obliged to rely upon her memory alone, and could not give any fuller details, but that she would fix the date of the payments by reference to certain events, and urging that it would be for the jury to say whether her evidence satisfied them that the loans, or any of them, had been made, and if made,

whether the amounts were still owing as alleged by the plaintiff.

The women were then sworn, and faced each other, the two husbands, who were to be called as witnesses, having been ordered out of court—an order which in this instance certainly furthered the ends of justice.

The plaintiff, who from her employment as a lady's maid in a good family, had acquired a quiet demeanour, gave her evidence in an apparently truthful and conscientious manner, and without over-emphasising her statements. The fact remained, however, that although she fixed the date of the various loans by reference to such events as the defendant's marriage, and an accident to her husband's cab, which caused him to want money, she could not give precise dates, or any better particulars than those already before the court, but she produced two letters, in which the defendant asked for loans, and she asserted that such loans were granted. Sometimes the money had been sent by letter, and acknowledged in the same way, but all such acknowledgments had been destroyed before her marriage, as she was afraid her husband would be angry with her about the money. The defendant had only repaid thirty shillings. She had not handed any of the money to defendant's husband, but he had more than once acknowledged having had it, and had thanked her and promised repayment. Had said she would allow the defendant to keep £5 for herself. This was in effect the plaintiff's evidence in chief. She

was cross-examined as to her former friendship with the defendant, and admitted that they had been like sisters; but that for some time past they had not been on visiting terms; could not say how much money she had when the first loan was made; could not swear positively how the £17 were made up, but was certain that that was the amount due in September, 1877. Had kept no accounts or memoranda, but had had some letters acknowledging receipt of money, had destroyed these for the reason before explained. Would swear only 30*s.* had been repaid. Could not give any particular reason for the long delay in bringing the action.

The plaintiff's husband was then sworn, and proved a conversation, when, the defendant and her husband being present, the debt had been referred to, and neither the defendant nor her husband had disputed it. He knew also that his wife had sent a letter asking for payment, and had recently asked defendant's husband in the street when he was going to pay, and that the latter had said that he did not mean to pay "because of the scandal."

This was the plaintiff's case.

In addressing the jury for the defence the defendant's solicitor made some strong comments on the unsatisfactory character of the case presented by the plaintiff, referring to the former friendship of the parties who were now upon bad terms, and the insufficiency of the particulars. Would the gentlemen of the jury like to be sued

on such particulars as these? So far as he, the solicitor, was concerned, he would not bring forward a claim unless he were prepared with proper dates and items. What was easier than to say at such and such a date the sum of £17 was owing, but to be unable to say how or in what particular instalments that sum had been advanced? Would it be safe or right to accept such a vague and unsatisfactory statement, especially when it was remembered that though the plaintiff was in humble and poor circumstances, the claim, on her own showing, had been allowed to sleep for years and years, only to be raked up now when there had been a quarrel and when the plaintiff's husband being out of employment would find the money especially useful. That money had been lent, though not so much as had been alleged, he was ready to admit, but the defendant would swear in the most positive manner that every shilling which had been borrowed had been long ago repaid.

The defendant was then called and proved to be a respectable looking woman and apparently rather better educated than her former fellow servant. Her demeanour however did not create so favourable an impression. There was something sullen and defiant in the manner in which she gave her evidence. She bore out the statement which her advocate had made, and swore most positively that every farthing of the borrowed money had been repaid, and added that it was true that £5 had been allowed to her as a

gift, but that it was for introducing the plaintiff to her husband. She denied that she or her husband in her presence had admitted owing the money.

Cross-examined: She could not say what was the total sum she had borrowed, but was certain she had repaid everything; could not say when she had made the repayments, could not give any dates, it was all a long time ago. Had not got any letters acknowledging payment or any entries in a book. It was not true that she kept a diary, (reluctantly) she had a book in which she wrote down things that happened,—did not call that a diary. She supposed the book was at home, had not thought it necessary to bring it, (questioned as to her knowledge of a notice to produce which had been given with regard to the "book," the witness looked at her solicitor, who said he had told her to bring any book containing an entry of the matters in dispute). The book contained nothing about the borrowing or repaying of this money. What kind of things did she put down in the book? Why, all kinds. She put down when the plaintiff was married, and also when her (the defendant's) dog died, would swear again that the book had nothing in it about the money. Had never received a letter after the date of plaintiffs marriage, requiring repayment of the loan. Had received application from plaintiff's solicitor but had not taken any notice of it; gave it to her solicitor. When did she give it to him, before or after the summons was served? Well, afterwards, she believed.

The defendant's husband was now called and examined. He swore that he had never had any of the money; had never thanked plaintiff for it or promised repayment. Plaintiff's husband had spoken to him in the street when he was with his cab and had wanted him to fight.

Cross-examined. He could not say why he wanted to fight, the man appeared angry. That was after the solicitor's letter demanding payment had been received. Could not say what had become of the letter which plaintiff had written after her marriage, asking for the money; supposed it was at home somewhere. Had seen his wife writing in a book. Yes, she had had it for years. Could not say whether the book contained anything about the money; could read and write but was not much of a scholar. Had never said that he would not pay "because of the scandal." That expression was quite an invention. Remembered when an accident happened to his cab, but could not say how he got the money to buy a new one; supposed he "had it by him."

That was the case for the defence; the defendant's solicitor, no doubt judging that the jury needed no re-capitulation of what his two witnesses had said, and that he could not improve his case by further arguments, did not exercise his privilege of summing up.

On the other hand there was a fair field for a "reply," and the plaintiff's solicitor availed himself of it, reminding the jury of the simple and straightforward statement made by the plaintiff,

her demeanour in the witness box and the readiness with which she had answered all questions put to her in cross-examination. Taking her evidence alone did not it appear to be truthful and consistent from first to last, and such as would be expected from a respectable woman who had held her situation for upwards of seven years and had only left it to be married? Yet it was suggested by the defence that this woman had come forward in the most deliberate manner to perpetrate what would be a gross and wicked attempt at fraud, if her evidence were untrue. There could be no mere question of mistake or forgetfulness; there was a direct conflict of testimony with the inevitable result that perjury had been committed on one side or the other. It had been suggested by the defendant's advocate that the particulars were incomplete and unsatisfactory, but would it not have been far more suspicious if after the lapse of so many years the plaintiff had professed without the aid of any memoranda to give any precise dates and detailed particulars. For the defendant's solicitor to talk of what he or they, the jurors, would do or be expected to do before bringing forward such a claim was beside the mark. He and they had their books and their clerks and their no doubt excellent system, but the plaintiff was only a domestic servant, having had little or no education, and for that reason, more in the habit of relying upon her memory for assistance. Again, did not his friend's argument cut both ways? for

if it was surprising that the plaintiff could give no better dates or figures, was it not ten times more remarkable that the defendant, who could read and write very well, who kept a diary or journal or book—whatever it might be called—in which she wrote down her friend's marriage, the death of her dog, and such like incidents, could yet give no particulars, and professed to have made no entry of the borrowing or repaying of the money. Was not that a singular circumstance? Would the jury accept the defendant's bare assertion that everything had been repaid? for there was no denial of *some* money having been borrowed. There was one statement made by the defendant in her evidence which would help them to value it at its true worth. Of course they had noticed what she had said when asked where was the letter demanding payment, sent by the plaintiff a long time ago. She had denied that any such letter had been received, but what said her husband? why, that he supposed the letter was at home; and no doubt that was the truth, and if it was the truth could it be believed that the defendant would be ignorant both of the receipt of that letter and its present existence. What conclusion then could they come to but that the defendant had deliberately lied, and had only been detected in this instance through her husband being out of court and in that way prevented from making his story fit in with hers. In judging between these two women let them call to their aid their experience as commercial men and consider whether it

was not the fact that for one person who would have the audacity to concoct a fraudulent claim and perseveringly press it in open court (and no doubt such criminals had existed and might still be found), there were scores and scores of people who from motives of spite or dishonesty would stick at nothing in order to defeat a just and lawful claim.

The judge summed up, and the jury took the letters and particulars and retired to deliberate. In about a quarter of an hour they returned into court. They found for the plaintiff for the full amount claimed, and the judge, in granting costs, stated that he entirely agreed with the verdict. There can be no doubt that the jury had been enabled to come to a right decision, but it was a case of considerable difficulty, in consequence of the direct and positive contradiction which was given to the plaintiff's case. It is in matters of this kind that the advocate's art may be exercised in the good cause of helping to vindicate truth, and to detect and expose falsehood.

The above case is not put forward in any sense as a model, but merely as an illustration based upon fact, and which the reader may analyse for himself, and decide what sort of treatment he would have applied to the subject, either as the plaintiff's or the defendant's advocate, with the view of establishing what he believed to be the truth.

If judgment has once been given by the judge sitting alone he is *functus officio*, and can neither

rescind nor alter it. He has the power of granting a new trial, but it is by no means so easy to obtain a new trial in the county court as in the High Court of Justice. Where the amount for which judgment is given does not exceed £20, the court may order payment by instalments; but where the debt or claim exceeds £20, and judgment is given for a sum in excess of that amount, the judge has no discretion but to make an order for payment either immediately or within fourteen days, though the plaintiff, or his representative, can, if he pleases, consent to an order for payment by instalments.

Costs are entirely in the discretion of the judge, but they will follow the event in the absence of any order made by him to the contrary.

There are some cases in which the court can allow costs upon the scale applicable to claims exceeding £20, although the action may be brought for a smaller sum. This is so when an injunction is granted under the extended powers acquired by these courts by virtue of the Judicature Acts. The judge can make the like order as to costs in actions to recover the possession of tenements where the fees of court are paid on £5 and upwards.

Where the summons is issued by a solicitor for his client, the particulars must be signed by him or on his behalf, or he may lose his costs.

An order for costs will include payments to witnesses, but in strictness the witnesses should be specified, as otherwise an objection may arise

upon taxation that certain witnesses were not allowed at the hearing.

When the scale of costs applicable to a counter-claim is higher than that which applies to the original claim, the court may order certain costs to be paid upon the former scale. A very valuable judgment, dealing with this and kindred points as to costs, was delivered by Sir Richard Harrington, Judge of the Evesham County Court, on the 22nd July last. It was reported in the *Law Times* of 3rd September following.

Where, in an action of contract the plaintiff claims more than £20, or in an action of tort more than £5, the defendant may give notice to the registrar and the plaintiff five clear days before the return day that he objects to the action being tried in the county court, and it must then be tried in the High Court, provided the defendant gives security or makes a deposit to secure the plaintiff's costs if he succeeds (19 & 20 Vict. c. 108, s. 39). Proceedings may also be removed to the High Court by writ of *certiorari* by leave of a judge of the High Court and upon certain conditions as to security for costs, even where the amount claimed is less than £5. (19 & 20 Vict. c. 108, s. 38). The application under the latter section may be made *ex parte* without notice to the other side, and must be supported by affidavit. Under certain circumstances, as where the judge is interested in the cause, the venue can be changed to another county court. (See also 9 & 10 Vict. c. 95, s. 90.)

On the other hand in actions of contract where the demand does not exceed £50, or is reduced by set-off or otherwise below that amount, a judge of the High Court may, on the application of either party after issue joined, send the cause to any county court for trial (19 & 20 Vict. c. 108, s. 26). Or the defendant may generally on applying within eight days from the service of the writ, obtain an order sending the cause for trial in the county court in which it might have been commenced (30 & 31 Vict. c. 142, s. 7), whilst section 10 of the last-mentioned Act enables the defendant, in an action for libel, slander, malicious prosecution, seduction, etc., where he can establish that the plaintiff has no visible means of paying his (the defendant's) costs, should the verdict go in his favour, to obtain an order either that all proceedings shall be stayed, or that the action shall be remitted to a county court for trial No such action as specifically mentioned above can be taken to the county court in the first place (*a*).

Appeals from the decisions of county courts were formerly regulated by section 14 of 13 & 14 Vict. c. 61, known as the County Courts Act, 1850, and were by means of a "case" stated for the opinion of the court above. This section provides for an appeal where the amount sought to be recovered in the action is not less than £20, but can only be resorted to where the party appealing is dissatisfied with the determination or direc-

(*a*) In the year 1879 no less than 874 causes begun in the High Court, were remitted to the County Courts for trial.

tion of the court in point of law, or upon the admission or rejection of evidence.

No appeal will lie under any circumstances upon an interlocutory matter. By 19 & 20 Vict. c. 108, the right of appeal was extended to proceedings in replevin and interpleader, and for recovery of tenements (the £20 test being still preserved), and to all actions where the parties agree that the court shall have jurisdiction. And by section 13 of 30 & 31 Vict. c. 142, (the County Courts Act, 1867), an appeal was allowed in all actions of ejectment, and in all actions in which the title to any corporeal or incorporeal hereditament shall have come in question, and, with the leave of the judge, in all cases in which previously no appeal had been allowed; all such appeals as before mentioned were made subject to certain conditions, the most onerous of which was the giving of security by the appellant in every instance.

It is open to the parties to an action by themselves, their solicitors or agents, by writing, to agree that the decision of a county court judge shall be final (19 & 20 Vict. c. 108, s. 69), and no such agreement need be stamped.

Of late years, however, the old practice on appeal has been superseded by the system of appealing by motion under section 6 of the County Courts Act, 1875, which applies in any cause, suit, or proceeding (other than a proceeding in bankruptcy), in which any person has the right of appeal (*i.e.* under the former Acts). Such appeal is to be *ex parte* in the first instance, and is to be granted upon such terms as to costs, security, or stay of

proceedings, as to the court to which such motion shall be made shall seem meet. Unfortunately the concluding part of the section which requires the judge, at the request of either party, to make a note of any question of law raised at the trial or hearing, and of the facts in relation thereto, and of his decision thereon, and which also provides for a copy of such note being furnished, has led to considerable difference of opinion on the part of the judges both of county courts and of the High Court. The solicitor who contemplates an appeal on behalf of his client must therefore exercise great care in making the request mentioned in the section, and to enable him to do this he will have to study the decisions which have been given from time to time on this particular point, and to reconcile them if he can. It is to be hoped that the next County Court Act (and there is always one in view) will put the practice in respect of appeals by motion upon a more intelligible footing.

What has been said upon this subject hitherto does not apply to cases which the High Court may remit to a county court for trial.

The County Courts Act, 1875, also established the new system of "Default Summonses," and by section 5, provides that the judge may, if he thinks fit, on the application of either party, summon to his assistance persons of skill and experience in the matter to which the action or proceeding relates, to act as assessors.

Previous to this enactment, the power of summoning assessors had existed in cases coming within the admiralty jurisdiction of the county

courts. The important part played by nautical assessors in causes of this description will be admitted by all advocates who practice in those courts in which the jurisdiction can be exercised, and in which assessors are in the habit of sitting with the judge. Mercantile assessors may also be summoned in any maritime cause (see 31 & 32 Vict. c. 71, s. 10, and 32 & 33 Vict. c. 51, s. 5). An Act recently passed confers upon county courts a new and exclusive jurisdiction of a peculiar character. I refer to the Employers' Liability Act, 1880, which came into operation at the beginning of the present year. How this Act will work is not for me to speculate. No less an authority than Lord Justice BRAMWELL has prophesied against it with his usual vigour and force of language. Although every action brought under this Act must be commenced in a county court, it is provided by section 6, that it may, upon the application of either plaintiff or defendant, be removed to a superior court, "in like manner and upon the same conditions as an action commenced in a county court may by law be removed." It appears, therefore, that a defendant may avail himself of the privilege conferred by section 39 of 19 & 20 Vict. c. 108; and on giving security for the amount claimed and costs, as therein provided, can insist on having the case tried in the superior court. This power only arises where the amount claimed exceeds, in an action of contract, £20, and, in an action of tort, £5. But the whole amount for which security is given, must not exceed £150, and, as the sum claimed under the

Employers' Liability Act may exceed £50 (it may be the plaintiff's estimated earnings for three years; see section 2) the margin left for securing the costs in the High Court might be very narrow or nowhere at all. Probably, however, for this and another reason (the last-mentioned Act being inapplicable so far as concerns the plaintiff) the party seeking to remove the proceedings will apply for a writ of *certiorari* under section 90 of 9 & 10 Vict. c. 95, and the judge will then have full discretion as to requiring security for costs.

It may be pretty confidently predicted that the Employers' Liability Act will furnish many opportunities for legal argument. Some important questions were raised in a case tried in the Bow County Court. The first was a preliminary point, viz., that the notice of injury required by the 7th section to be given to the employer within six months from the accident was not duly served. The plaintiff relied upon a letter written by his solicitor and sent, unregistered, through the post to the defendant, who subsequently acknowledged its receipt. It was contended for the defendant, that this notice was not in accordance with the terms of the Act, which provides that the notice shall be served either by delivery at the residence or place of business of the employer, or by being posted as a registered letter.

The judge held that the acknowledgment of the receipt of the notice had in effect waived the necessity for registration, but as the point was a novel one, he granted leave to appeal.

Another question was whether the plaintiff

having by his particulars, claimed "£10, or such other sum as might be awarded to him," could have judgment given for him to the maximum prescribed by section 3 (before referred to) viz.: a sum equal to three years earnings, &c. It is presumed that the court fees were paid upon the scale applicable to the claim for £10 only. This point was not decided as judgment went for the defendant (*a*).

An action for compensation under this Act is not maintainable unless notice (in writing, with particulars as defined by section 7) is given to the employer within six weeks from the injury being sustained, and the action must be commenced within six months from the occurrence of the accident, or brought by the representatives of a deceased person within twelve months from the time of his death (section 4). Section 6 (sub-section 2) provides for the appointment of one or more assessors "for the purpose of ascertaining the amount of compensation," where the action is not tried by a jury; and (by sub-section 3) rules may from time to time be made for regulating the practice and procedure under the Act. In pursuance of this section, a set of rules was duly approved by the committee of county court judges, and certified by the Lord Chancellor (see the County Court Rules, 1880). The Act extends, not only to England, but also to Scotland and Ireland, and is to be in force until the 31st Decem-

(*a*) The above was the first action brought under the Act, but recently there have been others of equal, or greater interest.

ber, 1887, and to the end of the then next session of Parliament.

The expression "Workman," means a railway servant and any person to whom the Employers and Workmen Act, 1875, applies. The Act, therefore, will not confer any benefit upon persons engaged in mental, as distinguished from manual labour (unless they be railway servants) nor upon menial or domestic servants. When the Bill was under discussion in the House of Commons, it was proposed as an amendment, that domestic servants should be included in the term "Workman," but this was negatived, as also was a proposition that the Act should extend to persons such as dockyard men, employed by the Crown. Among the most remarkable amendments brought forward was one that no person should be permitted to employ either solicitor or counsel in any proceedings under the Act! This was a delightful specimen of the profound wisdom which is from time to time exhibited by individual legislators. Had the amendment been carried (it was withdrawn without discussion) the bewildered layman would certainly have sustained a greater hardship than the legal profession. Perhaps the same original member of the lower house may, in more enlightened times, make a similar proposal with regard to other branches of the law, so that the rising generation may live to see the portals of the law courts closed upon the lawyers, whilst the judges and the public are heard within settling such little questions as may arise without the assistance or *intervention* of solicitors and counsel.

PART III.

Coroners' Inquests.

In the general way, the coroner's court (which, unfortunately, is usually held at a public house), is open to the public; but the coroner may, if he thinks fit, exclude particular persons, or even the public generally. Nor can counsel or solicitors claim as of right to be present and take part in the proceedings. The coroner has an absolute discretion as to what is necessary or desirable in the circumstances of each particular inquest, and there appears to be no law, to prevent him from allowing other than legal practitioners to attend his court, and examine, or cross-examine witnesses. No doubt most persons are sufficiently modest, or sufficiently wise, to refrain from assuming functions for which they are unqualified; but, on the other hand, some adventurous and self-confident individuals are to be found, who are ever ready to push themselves forward—even as men step in where angels fear to tread. One such individual desired to attend the inquest which was held a few years ago in consequence of the fatal explosion on board H.M.S. *Thunderer*, and on that occasion, the late Lord Justice Thesiger, then Mr. Thesiger, Q.C., who was one of the counsel engaged upon the inquiry, urged forcibly, and clearly, the undesirability of admitting a person, who was neither a barrister nor a solicitor to act as an advocate, in

that very important branch of an advocate's duty, viz., the examination, and cross-examination of witnesses.

As a rule, it will be found, that coroners welcome the presence of professional men at their inquests, and readily avail themselves of their assistance in eliciting the truth; but it must be remembered, that these officials have, at times, a difficult and delicate task to perform, in deciding whether a particular person is so interested in the subject matter of the inquiry, as to render it fair and reasonable that his legal adviser should be allowed a *locus standi* at the inquest. Take, for example, the inquiry which was necessitated by the lamentable collision between the *Princess Alice* and another vessel, which shocked the whole country not very long ago. The number of legal gentlemen, who requested permission to take part, in the proceedings for their respective clients, must have been extremely embarrassing to the coroner, who held the inquiry, and my impression is, that he was obliged to refuse to allow the active attendance of some of them. In another collision case which came under my notice, the owners of the respective boats were represented, the proprietors of the pier, off which the accident occurred, were represented, and the Crown also was represented, because the man who had lost his life was in Her Majesty's service. To quote one more instance, I may mention a case in which a man was killed by a bull, which ran out of a railway station. The deceased's friends had

their solicitor at the inquest; the railway company sent theirs; the owner of the bull considered that his interests demanded attention, and I believe, somebody else was represented also, possibly the man who had sent the bull to the station.

The two last are not very exceptional cases. What ground can there be, then, of surprise, that jurors, if not coroners, should sometimes wax impatient, and fail to see the usefulness, or the drift of questions put by a solicitor in the hope of protecting some client, whose interests are rather pecuniary than otherwise? True, it is, that a coroner's jury are rarely inclined to keep very strictly to the main object of the inquiry, viz., the cause of the deceased's death; but they are ready to resent irrelevance or diffuseness in others, and may possibly protest against a waste of their valuable time.

It is that kind of protest which the solicitor who attends a coroner's inquest must endeavour to avoid, and especially must he refrain from making any angry retort, or indeed, getting into any sort of argument with a juryman.

In the first place, having satisfied yourself that your client really has a legitimate and reasonable claim to be represented during the proceedings, you will ask the coroner's permission to watch the inquest, giving the name of the person whom you represent, and perhaps adding, in the well-known formula, that he is anxious to assist the coroner and jury by every means in his power, whether by giving evidence or otherwise.

If this permission is granted, it will be for you to serve your client, and protect your own dignity by putting only such questions as are likely to produce replies favourable to him, and such as will not lay you open to the charge of travelling into topics beyond the scope of the inquiry. To do this, will require considerable skill, and some self-restraint; for it must be remembered that, instead of having only one broad question to decide upon, the court finds it almost impossible to exclude side-issues of all sorts and descriptions, involving, perhaps, the degree of blame attaching to a number of persons who stood in various relations of responsibility to the deceased person, and the public at large.

It will be for the coroner to decide when you shall be at liberty to cross-examine, but the general practice is for him to take the witness's examination-in-chief, and then to be followed by such of the jurors as may wish to put questions, commencing with the foreman. There is no prosecutor, and there is no prisoner at an inquest, in the ordinary acceptation of the terms, but it may come to pretty much the same thing where there is one person seeking to throw blame upon a particular individual, and the latter is desirous of warding it off. If this be the case in the inquest which you may be attending, the coroner will probably consider it fair that the accuser's representative shall examine the witnesses when the jury have had their turn, and that you, if you appear for the suspected person, shall then be allowed to cross-

examine. No hardship can arise from such a course as the coroner will be able to clear up any point which the cross-examination has left in doubt. Such a rule as this cannot, for obvious reasons, be adhered to in all cases, such as those in which the interests represented are very numerous, and in every instance the coroner will have the power to regulate the proceedings as he may think fit.

When it comes to your turn to tender witnesses, or to suggest that your client himself shall give evidence, you must do so, with the full sense of the responsibility involved. Although no actual charge may have been made against your client, it may be perfectly well understood that there soon will be one, and yet he will, in the meantime, be eligible as a witness. In such circumstances as these, some coroners do not think it right to afford the incriminated person an opportunity, or at any rate any encouragement, to be sworn as a witness; others consider it their duty to allow such person the option of clearing himself by tendering his own evidence, subject to the usual warning that, he is not bound to answer any questions in such a way as would criminate himself.

The Prince of Leiningen and Captain Welch, received this warning, upon their volunteering their evidence at one of the inquests, which arose from the loss of life occasioned by the collision between Her Majesty's Yacht and the *Mistletoe*, some few years ago.

The man who shows reluctance to give evidence may give rise to, or may strengthen, an inference unfavourable to himself; and the man who insists upon giving evidence, may thereby, help to procure his own conviction (apart from making manifest any pecuniary liability), if there should be a subsequent prosecution. The latter alternative may be illustrated by the case of the man Payne, who gave evidence at the inquest held upon the body of the unfortunate Miss McLean. The jury found a verdict of manslaughter, and Payne was thereupon committed by the coroner, and tried at the Central Criminal Court, where the counsel for the prosecution put in evidence the prisoner's depositions taken before the coroner. He was convicted, and sentenced to penal servitude for life. How far his own testimony may have helped to bring about that result it is of course impossible to know, but had it not tended to support the prosecution, the experienced counsel for the Crown would not have insisted on making the accused's own evidence, a part of the case against him.

It will be obvious, therefore, that the duty of advising a client as to whether he shall or shall not tender his evidence, will often be a very anxious one, though in the majority of cases it may be thought less injurious that he should face the ordeal than that he should appear to avoid it.

It will sometimes happen that before the conclusion of an inquest, the police will lay their hands upon the person implicated, and then, owing

to the conflict of authority which so often prevails between the magistrates and the prison authorities on the one hand, and the coroner upon the other, the prisoner will very likely be prevented from attending the inquest, and will thus be exposed to the hardship of having a case proved against him in his absence. If he is represented at the inquiry by a solicitor, the hardship will of course be lessened, but, otherwise, serious injustice to the accused person may be the result of this jealousy amongst officials. If it is decided to examine your client, or those who support his case, it will be in the discretion of the coroner whether his evidence shall be given in the first place in answer to questions put by yourself or by him.

Occasionally you may find that you have to place the evidence in such a light as will satisfy, not merely coroner and jury, but also a skilled person appointed to sit with the former as his assessor. The most familiar instances of this kind are those in which inquests are held in consequence of deaths caused by railway collisions.

The Railway Regulation Amendment Act, 1871, (34 & 35 Vict. c. 78) provides, that where a coroner in England, who is about to hold an inquest on the death of any person, which has been occasioned by an accident of the description mentioned in the Act, makes a written request to the Board of Trade in that behalf, the Board may appoint an inspector or some person possessing legal or special knowledge to assist in holding such inquest, and the appointee is to act as the assessor

of the coroner, and will be required to make a report to the Board of Trade. A somewhat similar clause is contained in the Explosives Act, 1875, (38 & 39 Vict. c. 17) which, however, is more stringent in its terms as to the steps which are to be taken by the coroner in order to procure the attendance of a Government Inspector. By section 65 it is provided that a Government Inspector, or person employed on behalf of the Secretary of State, shall be at liberty at any such inquiry to examine any witness, subject nevertheless to the order of the coroner, upon points of law. Another and older statute may be mentioned as containing a very similar provision, viz., the Mines Regulation and Inspection Act, 1860, ss. 19 & 20.

The presence of an assessor in pursuance of either of the foregoing Acts, or when otherwise sanctioned by the Government, may either render the solicitor's duties much more onerous, or considerably lighter, than they would be if no assessor were present. It must depend entirely upon the point of view from which you are called upon to act.

If you cannot serve your client by putting questions to the witnesses, you cannot actively serve him at all; for it is the almost invariable practice not to permit speeches at inquests. I believe that, some few years ago, the rule was relaxed upon the occasion of an inquest arising out of a railway accident, and that counsel were permitted to address the jury; but it is not usual to ask for the indulgence, and when asked for, even

by eminent counsel, I have known it refused. The rule is, no doubt, a good one, and were speeches permitted, the probability is that the main object of the inquiry would be even more easily lost sight of than it sometimes is under the present practice. Verdicts returned after the delivery of eloquent speeches might be still more remarkable than those with which we are familiar, as indicating the hopeless confusion which sometimes prevails in the minds of coroners' juries.

The evidence being closed, the coroner will sum up and the jury will find their verdict, adding such "rider" as they may think fit. Occasionally it will happen that the jury will be unable to agree, and instead of discharging them, the coroner may think it his duty to bind them over to attend at the next assizes, there to have the benefit of the direction of one of Her Majesty's judges.

The old authorities lay this down as the proper course to be pursued where, after full opportunity for deliberation, the jury fail to arrive at a verdict. The modern authorities, however, that is to say, the judges themselves, do not very much encourage the practice. They are prone to exhibit a certain degree of surprise, or even of injured innocence, on such occasions, and one of them observed, in a case which occurred not long ago, that he should not have blamed the coroner if he had discharged the jury. The fact is, that when the jury fail to agree—and it must be remembered that the verdict of a majority, if that majority

number not less than twelve, can be accepted—it is sometimes less their fault than the coroner's. A coroner who understands his business will generally manage to get a verdict of some sort returned, but there are coroners who, in their desire to appear strictly impartial, go to such an extreme that their summing up becomes perfectly colourless and thus, the jury are left to grope unaided for a way out of their perplexity. In a case which excited considerable attention a few years ago, the coroner, who had special reasons for wishing to show no bias, merely read the depositions through to the jury without a word of comment. Was it to be wondered at that those unguided men found it impossible to agree upon a verdict?

The "finding" of the jury may amount, either in express terms or otherwise, to a verdict of murder or manslaughter, and in either such event, it will be the coroner's duty to commit the accused person for trial. If the accused is at large, the coroner will issue a warrant for his apprehension; if he is already in custody, a detainer will be lodged with the gaoler or governor of the prison.

It may be pointed out that it is only in cases of murder and manslaughter that the coroner is required by statute "to put the material evidence in writing" (7 Geo. 4 Vict. c. 64); but it is the better and more general practice to take formal written depositions in all cases. The coroner is required to certify the evidence, the recognizances, and the inquisition, to the proper officer of the court, before or at its opening, so that the judge

may, if necessary, refer to the facts and the law as affecting them in his charge to the grand jury. An exception to this practice may occur under section 5 of the Prosecution of Offences Act, 1879, which provides that where the Director of Public Prosecutions gives notice to a coroner that he has undertaken, or is carrying on, any criminal proceeding, the coroner is to transmit to the director every recognizance, &c., which is connected with the said proceedings in lieu of delivering the same to the officer of the court in which the trial is to be had, but the director is to be under the same obligations as would otherwise be the coroner or other officer having custody of the depositions, to deliver to a person charged with manslaughter, copies of such depositions on "payment of a reasonable sum not exceeding the rate of three half-pence for every folio of ninety words." The right to be supplied with a copy of the depositions does not arise until after all the depositions of the witnesses have been taken (22 Vict. c. 33, s. 3).

Section 1 of the last-mentioned Act provides that, pending the trial at the assizes of any person against whom the coroner's jury have found a verdict of manslaughter, the coroner or deputy-coroner before whom the inquest was taken, may, if he thinks fit, admit such person to bail with good and sufficient sureties, and thereupon the accused, if in custody of any officer of the coroner's court or in any gaol under any warrant or commitment issued by such coroner, shall be discharged therefrom. Section 2 lays down the

mode of taking recognizances for which the coroner is to be entitled to such fees as clerks of justices of the peace are entitled to on admitting persons to bail.

In some cases the machinery provided by this Act for admitting accused persons to bail, will be found to work very unsatisfactorily. Where, for instance, the accused has been also committed for trial by a justice of the peace, and has been removed to the county prison, which may be a considerable distance from the coroner's place of residence, it will be found impossible to obtain the prisoner's release upon recognizances, unless the coroner will consent to go to the prison for the purpose of taking such recognizances, and this the law cannot compel him to do. A committing justice may endorse a consent to bail upon the commitment, and a visiting, or other justice, may then take the recognizances wherever the prisoner may happen to be. But a coroner or deputy-coroner cannot, as the law at present stands, depute his functions for this purpose to any other person, and thus, although both justice of the peace and coroner, may consider the case a proper one for bail, and may be satisfied as to the sufficiency of the proposed sureties, the prisoner may have to remain under lock and key until the time for his trial, however distant, may arrive. This precise difficulty arose in a case which came under the writer's observation. Two persons, a newly married couple were committed by both the coroner and a justice of the peace to take their trial for

manslaughter, and both magistrate and coroner agreed to accept bail. In the meanwhile, ere the sureties could be forthcoming, the prisoners were removed to a prison about twenty miles away, and, because the coroner was unwilling to journey thither to take their recognizances, they were obliged to spend their Christmas in durance vile, although the case against them was of the frailest character, and they were ultimately acquitted.

It was proposed to remedy this defect by a clause contained in the bill to consolidate, and amend the law relating to coroners, prepared and brought in by Mr. Secretary Cross, Mr. Attorney-General, Mr. Solicitor-General, and Sir Matthew Ridley, and ordered by the House of Commons to be printed on the 10th July, 1879. Had the bill (as amended by a select committee) passed into law, it would have enacted that, where, in a case of manslaughter, the coroner does not himself take bail, he may grant to the person charged, a certificate, and on production of such certificate, any justice of the peace might take the recognizance of the witness, and of the person charged. Besides this, the principal amendments proposed by the bill were (1) that formal depositions on oath should be taken in all cases, and signed by both witness and coroner; (2) that where the death of two or more persons appeared to the coroner to have been caused by the same wreck, explosion or accident, he should not hold more than one inquest, unless there should be

good reason to the contrary; (3) that a borough coroner might, with the approval of the local authority, appoint a person qualified to be a coroner, to be his deputy.

Under the present law, the singular anomaly prevails in boroughs having a coroner appointed under the provisions of the Municipal Corporations Act, 1835, that, although the local authority may elect any person they think fit to be the borough coroner, yet the deputy of the coroner must necessarily be a member of the legal profession, either barrister or solicitor, not being an alderman or councillor. But such deputy can only be appointed in case of the illness, or unavoidable absence, of the coroner, and the mayor or two justices must certify the necessity for such appointment, and such certificate must state the cause of absence of the coroner, and be openly read at every inquest summoned by such deputy. A county coroner may appoint a fit and proper person to act for him as his deputy generally, but such appointment is subject to the approval of the Lord Chancellor. The before-mentioned bill also proposed to give a local authority power to appoint an interim coroner upon the office of county or borough coroner becoming vacant. The persons to be legally qualified to hold the office of coroner were to be barristers, solicitors or medical practitioners. This bill which shared the massacre of the innocents at the end of the session in which it was introduced, was no doubt excellent in intention, and contained some useful provisions, but

most persons who knew anything of the subject were of opinion that it was not sufficiently thorough in its amendments, and that it was especially defective in leaving untouched the existing system of electing county coroners. At the same time it may be said, that any proposal to consolidate coroner's law as at present scattered up and down some thirty statutes will be a boon not to be lightly estimated. Perhaps some day, when the legislature can spare time for other than Irish affairs, we may be favoured with a more thorough-going and satisfactory measure than has yet been drafted on the subject. When that time comes, it is to be hoped that members of the legal profession will be on the alert upon a question which so nearly concerns them, and will succeed in obtaining an enactment that none other than lawyers shall be eligible for the office of coroner. There is no substantial reason why medical men should be considered more competent than other laymen to fulfil judicial functions. If there were a difficulty in obtaining medical testimony to assist the coroner's court, as it assists other courts, it might be otherwise, but, the conditions of the administration of justice being what they are, public policy demands that none but lawyers shall be permitted to expound the law, and decide what is, and what is not evidence. This is the ground, and the really firm ground, upon which solicitors should promote legislation upon the subject, although, in a profession so poorly provided with prizes, it would be excusable to proceed on the basis of securing as many loaves and fishes as possible.

PART IV.

Naval Courts-Martial.

The Naval Court-Martial is an unique tribunal, in which the unaccustomed civilian is likely to feel very much out of his element. The imposing uniforms of the members of the court, and of the attendant officers, the novelty of the surroundings (for these courts are usually held on the flag-ship of the commander-in-chief on a home station) the air of quarter-deck discipline which seems to prevail, and the peculiar nature of the proceedings, all help to impress one, and perhaps may occasionally serve to illustrate the saying that the sublime verges upon the ridiculous.

It is a public court, but the public usually consist of such members of the ship's company as have no particular duties on hand. Of course the press will be represented when the inquiry is one of special interest. Being a Court of Record, it may inflict fine or imprisonment where its authority meets with contempt. I will assume that a solicitor is retained for the defence, as those instances are extremely rare in which legal assistance is allowed to the prosecutor. It is considered sufficient to leave it to the judge advocate, who officiates as a sort of legal assessor to advise the

court on any questions of law and practice which may arise, and, when there is no prosecutor, it will be his duty to conduct the proceedings in support of the charge on the part of the Crown, thus combining to some extent the functions of advocate and judge. In such circumstances, the judge advocate is to be pitied, and he will doubtless do his best to avoid being placed in so disagreeable a position. The solicitor who receives instructions for the defence of a client who is to be tried by court-martial will act wisely if he communicates at once with the judge advocate, or with his deputy. The latter is generally a retired officer, who has qualified as a barrister-at-law, but in some instances he is a member of our own profession. This official will furnish a copy of the charges, *i.e.*, a kind of indictment or formal statement of the alleged offence or offences, and these should be very carefully considered and reference made to the Naval Discipline Act, and the Queen's Regulations or Admiralty Instructions, as bearing upon the particular case. Except in charges of mutiny, and in the absence of special circumstances, the accused is entitled to have the copy of charges not less than twenty-fours before the trial.

The accused will sometimes be entitled to a copy of another important document, viz., the "circumstantial letter," which is the preliminary report furnished to the Admiralty as shewing the precise nature of the offence charged. According to an Admiralty circular, a copy of this letter is to

be furnished to the prisoner in all cases where the original is transmitted to the president of the court.

The prisoner will receive a written notice of the time and place of trial, &c., in the form provided by the Naval Discipline Act. This notice requires the deputy judge advocate to be furnished with the names of the witnesses whose attendance at the court is desired by the accused. All persons, whether civil, naval, or military, must obey the summons to attend and give evidence (and will be privileged from arrest while in attendance at or going to and returning from the court). For the consequences of disobedience to the summons, or for refusing to be sworn (or to affirm), or for prevaricating in giving evidence, see section 66 of the Naval Discipline Act. It is not necessary to say anything as to the general constitution of the court except that it will consist of not less than five, and not more than nine officers—the number is usually five, and the rank from which they will be selected depends upon the rank of the person who is to be tried.

It is important to note, however, that if the prisoner objects to the constitution of the court, he must state his objection as soon as the names of the officers composing it have been read over. This is done as soon as the court is assembled, and the prisoner will then be asked if he objects to be tried by any particular member (section 62).

A member who has also been summoned to give evidence (whether for the prosecution or defence)

may be properly objected to, provided the evidence is not to be merely as to character. Other objections, such as that the member has made statements shewing partiality, may be taken and the court will decide upon them, and if they think fit, will substitute another officer for the one disqualified.

It need hardly be said that the accused will be ill-advised if he makes objections without very real and substantial grounds. On the other hand, in the absence of any objection, the anomaly may arise of a member of the court being called upon to act both as witness and judge.

If the objection is not taken at the right moment, the constitution of the court cannot afterwards be impeached, for no member of the court will be held as disqualified unless a valid objection is taken with regard to him before the oath is administered—for here all members of the court are sworn, as is also the judge advocate.

The court having been opened, the judge advocate will read the warrant, or order, authorizing it to assemble, and will afterwards read the charges preferred against the prisoner, who will be brought in by the provost-marshal. This imposing functionary stands beside him throughout the proceedings, with drawn sword in hand. There is no plea of not guilty taken, but the prisoner can voluntarily plead guilty in which event he may lay before the court a statement with the view of obtaining a mitigation of punishment, and he may also call witnesses as to character.

If the prisoner happens to be an officer, his sword will, before the proceedings commence, be laid on the table of the court. The judge advocate will doubtless have provided a seat for the solicitor near his client, and will now inform the court that the prisoner desires permission to be assisted by his friend Mr. So-and-so, solicitor. It must not be supposed, however, that solicitors and counsel have any preferential right to attend the proceedings. The court may admit any person to act in the capacity of "friend" to the accused, but will probably be as disinclined to allow the attendance of unqualified persons as the prisoner would be unlikely to apply to such persons for advice and assistance where professional aid is obtainable.

Witnesses who are to be called are not allowed in court until the time comes for taking their evidence. First come those who are to support the prosecution; these are questioned by the prosecutor who is usually the senior officer of the prisoner's ship. The judge advocate then endeavours to bring out any point which the prosecutor has not succeeded in making clear, and as it were, to complete the form of depositions. The members of the court will of course put such questions as they think fit, subject to the advice of the judge advocate as to their admissibility in point of law.

Lastly, the prisoner will be at liberty to cross-examine through his "friend." All questions are written down by the judge advocate, by whomsoever they may be asked.

Your duty will be to write your questions as

concisely as possible on slips of paper (which should be in readiness) and to hand them to the judge advocate, who, if he considers them proper and relevant, will copy the questions upon the proceedings and read them aloud to the witness. Bear in mind that the question must be written in the first person, as the theory throughout is that the prisoner himself is cross-examining, upon your advice and suggestions.

If any question, whether asked on the one side or the other, is objected to, a written objection must be handed in and the opinion of the court is taken; if the point cannot be readily decided the court will be cleared. Thereupon, the audience, the prosecutor, the prisoner and his "friend," have to retire incontinently while the court makes up its mind. As the objections taken are usually on the part of the prisoner, this process of clearing the court may happen again and again. It will, therefore, be wise for the professional "friend" to use the right of objection very sparingly, since, constantly repeated, it will have the effect of irritating the court, the members of which will probably have a supreme contempt for so-called technicalities. Indeed, the proceedings are so essentially tedious that the undesirability of prolonging them unduly will be apparent to everyone who knows the danger of getting the court against him.

Strictly speaking, there is no right of re-examination, but if new matter has been elicited, a question is generally allowed to be put through the judge advocate.

After the close of the case for the prisoner, the court may call any witnesses whose evidence would appear to be material on his behalf. A witness may be recalled, by permission, at any period of the trial.

But, before calling witnesses, the prisoner will lay his defence before the court. To enable him to do this an adjournment will be allowed, either for a few hours, or longer, as the exigencies of the case may seem to require, but section 60 of the Naval Discipline Act provides that a court martial shall sit from day to day (except on Sunday) unless prevented from doing so by stress of weather, or inevitable accident. Of course the members can meet merely for the purpose of formally re-adjourning, but they will not care to do this without some very good reason being shewn.

This defence must be in writing, and must be written as if it emanated from the prisoner, who will have to sign it. If from the nature of the case you could expect but a short adjournment, it would be highly prudent to have the outline of the defence drafted beforehand; it can then be corrected or modified in accordance with circumstances as they have appeared in evidence, and your clerk will be able to make a fair copy for signature. In many cases, there will be no time for you to return to your office, and the task of preparing a written defence amidst the bustle and noise on board one of Her Majesty's ships, will be one of peculiar difficulty.

As regards the style and line of the defence, it would be impossible, for obvious reasons, to lay down any general rules. You must remember that it is desirable to show the greatest deference and respect to "Mr. President, and members of this Honourable Court," whilst on the other hand the tone must not degenerate into one of gross flattery or compliment. Here, as in most other matters, method will be very expedient. Deal with the charges one by one, and in due order, or, in other words, present such a view of the case that the court will be able to grasp your meaning, and follow your line of argument or pleading, without becoming wearied or bewildered. Upon the re-assembling of the court, the prisoner may read the defence, or the judge advocate will do so at his request. In the general way, neither of these courses is desirable, and it will be better for the solicitor to ask permission to read it. Such a request must be addressed to the judge advocate in an undertone, for you must never forget that you have no absolute *locus standi*, and the court is not supposed to recognize you in any way throughout the proceedings. The permission granted, as it almost always will be, you will have the opportunity of reading the defence with an emphasis and effect, which would probably have been entirely wanting if the defence were read by any other person than its composer.

The language which you adopt should be forcible without being violent, for a man can hit hard without being coarse, and if your words are

not well and discreetly chosen you may be stopped by the Court. For although you will be allowed a reasonable latitude nothing must be introduced which is contemptuous of recognized authority, or which tends to the injury of discipline in the service.

At the conclusion of the defence it is the invariable practice to hand in copies of the client's service certificates (such copies should be in readiness). If you fail to put these in, the court will doubtless infer that they, or some of them, are of an unsatisfactory character.

If you call witnesses as to character they may be cross-examined by the prosecutor, or by the court.

The defence and the examination of witnesses being at an end, the prisoner will be removed, and the court will deliberate. The decision will be that of the majority of its members, subject to certain reservations, where the punishment of death is involved. If opinion is chosen, and the votes are equal, the decision is to be in favour of the prisoner—though how this may have been, he will never know, for the oath of the members of the court binds them to secrecy. The court will finally be opened, the result of the trial will be announced and in the event of a conviction, the written sentence will be read, but the prisoner will not have to wait for this in order to know whether he is found guilty, for if that be so, his sword will have been placed with its point towards him—when there is to be an acquittal the hilt of *the sword* will be nearest to his hand.

If you have not succeeded in obtaining an acquittal, you may possibly have induced the court to exercise the power conferred by secs. 47 & 48 of the Naval Discipline Act. Thus, where the amount of punishment depends upon the intent with which the offence has been committed, the court may find that the act was done with an intent involving a less degree of punishment, and so a prisoner charged with murder may be found guilty of manslaughter, or even of common assault, and punished accordingly.

All the proceedings, including of course the evidence, the objections, the judge advocate's minutes, and the defence will in due course be transmitted to the Admiralty, and, subject to certain conditions, the prisoner will be entitled to a copy of the whole or any part of such proceedings, on paying for such copy at the rate of fourpence per folio of seventy-two words.

Except in case of mutiny, the punishment of death is not inflicted until the sentence has been confirmed by the Admiralty, or, on a foreign station, by the Commander-in-Chief; subject to this, and some other exceptions, the sentences of naval courts-martial take effect without requiring approval or confirmation.

PART V.

Military Courts-Martial.

Military courts-martial are of more than one kind; *e.g.*, they may be either general, district (or garrison), or regimental; but a solicitor's services will rarely be required at any other than a general court-martial, although now and then the non-commissioned officer or private (who may be tried by one of the minor courts), will seek the aid of a professional adviser. In the latter case the client should apply beforehand to the proper authorities for permission to be assisted by his friend; but the attendance of civilians at these courts is not encouraged, and the professional man who accepts a retainer will find that he has to do his duty under exceptional disadvantages. These appear to be unavoidable under the circumstances, for the officers constituting the court may often be men not well qualified to exercise judicial functions. Clothed with a little brief authority they doubtless interpret the articles of war, and the Queen's Regulations with the best intentions, but it is not surprising that without the aid of a competent legal assessor, they should sometimes go astray, or manifest somewhat crude notions of the laws of evidence. For these and for other reasons a solicitor attending a minor court-martial, may find it necessary in

the interest of his client to adopt this line of defence, not so much in the hope of convincing the court, as, in effect, to get upon the record objections, evidence, or arguments which will be likely to weigh with the confirming authority, which occasionally reverses the decision of the court below.

Most of the remarks which I may make will be considered as applying to military courts-martial of whatever grade or authority, but as having especial reference to general courts-martial.

The proceedings are chiefly regulated by the Army Discipline and Regulation (Amendment) Act, 1879, which was substituted for the Army Mutiny Act, and the Marine Mutiny Act, and which is renewed every year. It may be necessary to consult the articles of war, and the Queen's regulations, as well as the Act, before going into court (*a*).

The court having been proclaimed "open" by the provost marshal or other officer appointed to be in attendance, the prisoner will be brought in, and the officiating judge advocate (usually a barrister who has been in the service) will probably have provided a seat beside him (the prisoner) for "his friend."

There are rules as to the places which shall be occupied by the president, the judge advocate, the prosecutor, and others attending the trial, but it is unnecessary to record the details here.

(*a*) See p. 133.

The accused will generally be placed at the end of the room facing the president, and on the right of the president will be the judge advocate's table. Accommodation will also be provided for reporters. The court will be cleared by order of the president whenever the members require to deliberate or to be advised by the judge advocate.

The prisoner has a right of challenge as to individual members of the court under certain restrictions, but the judge advocate cannot be challenged. There are no peremptory challenges, however; but every objection must be explicitly stated, and will be entered on the proceedings. The other members of the court will either allow or disallow the challenge as against the member objected to. An objection to the president cannot be disallowed by less than two-thirds of the other officers forming the court.

Cases have been known in which every member of the court has been challenged, but a prisoner acting under sound advice will probably exercise the privilege very cautiously. If one member only is objected to, he will probably ask leave to withdraw, and his place will be taken by another officer.

The grounds of challenge of course vary, *e.g.*, the rank of a member of the court may turn out to be of a lower grade than that prescribed by law for the purpose. Statements showing a pre-conceived and malicious opinion of the prisoner's conduct will be a good ground of objection to the man who has uttered them, or

the appointment of an officer who is the person personally injured or aggrieved by the act for which the accused is to take his trial, or that the member is a material witness; but if his evidence will be merely as to character, the challenge will not hold good. (The prosecutor himself may be called as a witness to character.) An officer who has been sworn without challenge as a member of the court will not be rendered ineligible as a witness, but the objections to the combination of the functions of judge and witness will be manifest. Objection may be taken also to a member who has formed part of a court of inquiry held to investigate the same subject matter.

In the absence of challenges, or when they have been made and disposed of, the court will be sworn in, and the judge advocate and officers of the court will also take the oaths prescribed for them respectively. All persons present will stand during this ceremony.

It is usual for young officers to attend the proceedings for instruction. These, of course, take no part in the proceedings, but they are sworn to secrecy. Military courts-martial have a greater discretion as to adjournments than that possessed by naval courts. They are not compelled to sit from day to day, but the general rule is that no proceedings can take place except between the hours of eight in the morning and four in the afternoon, or at all events not without recording upon their proceedings the reason for continuing the sitting beyond the last named hour.

It is often the practice to swear more than the number of officers legally necessary to form a court, as otherwise the death of a member will have the effect of dissolving the court, and all the proceedings must be commenced *de novo* by another court ordered to assemble for the purpose.

The proceedings of the court must be suspended during the temporary absence of one of its members. This observation does not apply to the absence of the judge advocate, for whom a substitute may at any time be duly appointed. Upon the charge being read to the prisoner he will be required to plead either guilty or not guilty, but the latter plea will not disqualify him from calling witnesses as to facts as well as those who can speak only as to character; and, moreover, he may cross-examine the witnesses for the prosecution, for, whatever the plea, it is the duty of the court to investigate the charge, so that full information may appear on the face of the proceedings, which will afterwards be transmitted to the confirming authority. Thus, then, though the accused may admit his guilt, he will have the opportunity of extenuating his conduct, or eliciting circumstances which may operate in mitigation of punishment.

It would hardly be within the scope of the present work to enter upon the subject of special pleas in bar of trial. Instances where such could be raised would be of very rare occurrence, and any such objections would in all probability be

taken upon the accused receiving a copy of the charges, which will always be sent to him prior to the actual commencement of the trial.

The prisoner having pleaded, the trial will proceed, all witnesses on both sides being ordered to withdraw, except the prosecutor (who may sometimes be a witness), and who will of necessity be allowed to remain. The prosecutor will be allowed an opening address, but will not always avail himself of the privilege, unless the trial be one of an exceptional character. This address must be written, and having been read, it will be marked by the president and attached to the proceedings.

If the prosecutor gives evidence he must be the first witness, and he will be allowed to make his statement, due regard being had to the laws of evidence; but the examination of all other witnesses will be by means of question and answer, each question being reduced to writing.

The question, *i.e.*, the written question, will be filed, and will also be copied on the proceedings, and if allowed by the court and the judge advocate, the latter will read it aloud to the witness. A written objection to any particular question, stating shortly the grounds of such objection, may be handed in by the prisoner, and may be answered in the same manner by the prosecutor. Furthermore, the objecting party may, if necessary, submit a written "reply." Sometimes the judge advocate will recommend the withdrawal of the question, but if it is insisted upon it will be

filed, and all parties having been heard as before indicated, the court will be cleared, and the majority of its members will decide whether to admit or reject the question, or that it shall be referred to a superior authority for determination. The president will for this purpose have a casting vote.

The court itself is, of course, just as much bound by the laws of evidence as either the prosecutor or the accused. A question having once been entered on the proceedings cannot be expunged, but must remain there for the consideration of the confirming authority, together with the note of any objection upon which the court has refused to allow it to be put to the witness.

It has been laid down that the prisoner may reserve his cross-examination until the close of the prosecution, and no doubt this will be allowed either as regards all or some of the witnesses for the prosecution when there appear to be good grounds for permitting it. Usually, however, the cross-examination will follow upon the giving of the evidence in chief. It will be for the prisoner's adviser to write the questions and hand them to the orderly, who will take them to the judge advocate. The same formalities will be adopted with regard to questions put in cross-examination as if they were put in the examination in chief, and in the like manner the prosecutor may re-examine.

Upon the evidence which he has given being

read over to him, the witness will be allowed the opportunity of correcting or explaining any mistake which he may have made.

Before the trial a list of witnesses intended to be called by the prosecutor will have been sent to the accused, but the prosecutor is not bound to call all the witnesses whose names are given. On the other hand, the prisoner may claim to have their evidence taken.

A material question which has not been put at the proper time may be put afterwards through, and by permission of, the court.

Upon the conclusion of the evidence for the prosecution, the prisoner will be asked if he intends to call witnesses, or adduce evidence of any kind. If he answers in the negative, the prosecutor may sum up the evidence for the prosecution, and the prisoner may then put in his defence under the same conditions as those regulating the opening statement. The judge advocate will then sum up to the court.

If, however, witnesses are to be called for the defence, the prisoner may open his case, and may, when his witnesses have been examined, sum up their evidence and address the court generally. The prosecutor will then be entitled to a reply.

Now and then rebutting evidence may be taken, and when that is done the second address of the prisoner will follow after such evidence. Then will come the prosecutor's reply upon the whole case, and, finally, the summing-up of the deputy judge advocate.

It need hardly be observed that although the before mentioned number of addresses is sanctioned by the rules of procedure, the court will not expect the option to be exercised in every case. It should be, and in practice is, only resorted to where the trial is one of unusual importance, or the evidence is exceptionally voluminous.

A prisoner who is not assisted by a professional man will sometimes make a verbal defence, which will be taken down as nearly as possible in his own language and in the first person. It will be for the solicitor to prepare the written defence or the other addresses on the part of the prisoner whom he represents, and to enable this to be done the court will allow the necessary adjournment or adjournments. In the vast majority of cases the prisoner's adviser will probably deem it sufficient to prepare one address only, even when it may be considered necessary to call witnesses on behalf of the prisoner, and if that is done the prosecutor will rarely exercise his right to "reply."

No legal adviser, whether counsel or solicitor, will be allowed to read the address or addresses. This must be done either by the prisoner himself (which is rarely desirable) or by some military friend. This makes it expedient that the friend, whomsoever he may be, should have ample opportunity of studying the written statement, so as to avoid as far as possible those defects which must be expected in the delivery of arguments, com-

ments, and appeals which have been originated and set down by another person.

Frequently the judge advocate will consider it unnecessary to sum up, but if he does, the summing-up must be written and must be read in open court. No address will be allowed afterwards, with the exception that in minor courts-martial it has been considered that the prisoner will be entitled to address the court last.

The members of the court need not be unanimous in their finding. Judgment is passed in accordance with the opinion of the majority; two-thirds of the members must concur in a sentence of death. The better opinion is that as regards the finding the president will not have a casting vote.

But the matter does not necessarily end with the finding of the court, for it is open to either prisoner, prosecutor, or judge advocate to bring under the consideration of the confirming authority any question, such as the improper admission of evidence, or the decision of the court upon some point which has arisen in the course of the proceedings.

Where the prisoner is found guilty any previous convictions may be proved, no matter in what court they may have taken place. Certificates of conviction will be accepted, supplemented when necessary by evidence of identity. There may be also a general inquiry as to the past conduct of the accused, as this may influence the punishment to be awarded. The prisoner would

be allowed to cross-examine any witness giving an adverse opinion as to his general character, in order to ascertain his means of knowledge, or perhaps he might be allowed to bring forward rebutting testimony.

The proceedings of a general court-martial will be transmitted to the judge advocate general, and the sentence will have no effect until he, as the adviser of the Crown, confirms it, the theory being that the Sovereign confirms every such sentence. Other regulations apply where the court-martial is of inferior authority or is held abroad. The sentence of the court will not be divulged until it has been duly approved.

The confirming authority may order a reconsideration or revision of the sentence, but this cannot be done more than once with respect to the same trial. The court, however, may refuse to revise. If the decision of the court is not confirmed, the prisoner cannot in the general way be called upon to undergo a second trial, but the effect will be to make the sentence a nullity. The finding of acquittal does not require confirmation.

The full proceedings of a general court-martial under the foregoing system cannot be better illustrated than by a reference to the trial of Colour-sergeant Marshman, which was commenced at the Royal Marine Barracks at Forton on the 13th August, 1880. I use the word "commenced" advisedly, for this remarkable trial was probably one of the longest of the kind on record, the court having sat on no less than twenty-six days.

It is unnecessary to refer to the nature of the charges, which, as all the world knows, arose out of what was called the "Wimbledon scandal."

It may be safely asserted that every right or privilege which could be advantageously claimed either on the part of the prosecution or by the prisoner was claimed and exercised at this trial, and, owing to the special nature of the case and the important issues involved, the authorities sanctioned exceptional arrangements and expense, in order to facilitate the conduct of the inquiry.

A shorthand writer was employed and sworn to take *verbatim* notes of the proceedings under the directions of the deputy judge advocate, and the transcript of these notes was printed at the conclusion of each day's sitting, so that a print of the proceedings could be in the hands of each member of the court and of the other persons concerned officially in the trial upon the case being resumed on the following day. The prosecutor, an officer of Marines, was assisted by one of Her Majesty's counsel, instructed by the solicitor to the treasury and his local agent. Another officer acted as the prisoner's friend, and was assisted by a solicitor, and accommodation was also provided for the representatives of the National Rifle Association, which had a special interest in the inquiry, and their solicitor also attended to watch the trial.

The prosecutor's opening address (which was a model of conciseness and discretion) was printed (and read) as was also his reply upon the whole case. The same privilege (at the expense of the

government) was permitted with regard to the prisoner's opening statement and his second address or "defence." The summing-up of the officiating judge advocate was also printed.

The publicity given to this trial through the medium of the London press brought into prominence the most salient defects of the court-martial system. The chief of these defects is perhaps the mode in which the examination of witnesses is taken, a fault irrespective of the fearful waste of time involved in writing and reading every question and answer. Referring to this system in his "reply," and doubtless using the words of the learned counsel who "assisted" him, the prosecutor said:—"I may here remark how desirable it would have been if these two men (witnesses for the defence) could have been submitted to a *vivâ voce* cross-examination. Do not let it be supposed that I am wishing that that should be done with respect to the prisoner's witnesses which might not be adopted also with regard to witnesses for the prosecution. I venture to think that it would have established even more clearly the truth of Sage's evidence if he had had applied to him a careful, strict, sharp *vivâ voce* cross-examination; but I am sure that by no cross-examination such as that which we had an opportunity of administering to A. and B. was it possible completely to establish the falsity of their evidence."

Commenting upon these observations, the officiating judge advocate is reported to have made

the following remarks in his summing-up (after referring to the "instruction" under the Army Discipline and Regulation Act, which forbids a professional adviser of the prisoner to examine a witness verbally or to address the court):—"I may say that during the thirteen years I have officiated as deputy judge advocate I have frequently endeavoured to obtain permission for this instruction to be amended. The amount of public attention which has been given to this trial, and the fact that a member of the legislature is assisting the prosecutor, I hope may lead to the existing law being altered, so as to allow of witnesses before a court being examined *vivâ voce* by the professional advisers of both prisoner and prosecutor."

This was strong testimony, coming as it did from an official who, besides being an officer of the court and a barrister-at-law, held for many years a commission in Her Majesty's service. Such a person would not be likely to recommend changes calculated to be injurious to the service, or needlessly to attack long established usages.

Since the foregoing pages were written and printed the legislature has done *something* towards remedying the defects of the system referred to. The Regulation of the Forces Act, 1881, and the Army Act, 1881, have been passed and came into operation on the 27th September. Many sections of the Act of 1879 have been repealed, and the law has been amended in various particulars. Rules made with respect to courts-martial and the

procedure to be observed have also been issued in pursuance of section 70 of the new Army Act, but such rules are not to have full effect until the 1st January, 1882. After that date they are to be judicially noticed. By virtue of these rules a prisoner will be allowed the assistance of a legal adviser, or any other person, who may advise him on all points and suggest questions to be put to the witnesses, all of whom are to be examined orally. Subject to certain conditions precedent, both prosecutor and prisoner may be represented by counsel where the trial is by general court-martial; and in such cases counsel (*i.e.* barristers-at-law in England and Ireland) will be entitled to call and orally examine, cross-examine, and re-examine witnesses, and to make statements and objections and to address the court. These advantages, however, are to be subject to certain embarrassing restrictions and conditions, the existence of which may perhaps reconcile solicitors to their exclusion from the privileged class of advocates. Perhaps Her Majesty's advisers may yet decide that if a solicitor may be permitted to assist his military client by suggesting questions and advising on all points, it would be neither illogical nor dangerous to allow him to act freely as an advocate. Until this is sanctioned probably few prisoners will derive much benefit from the new rules as to professional assistance, inasmuch as soldiers, of whatever rank, who get into trouble can rarely afford the luxury of retaining counsel.

PART VI.

Arbitrations, Board of Trade Inquiries, Proceedings before the Wreck Commissioners, etc.

Solicitors are frequently engaged as advocates in proceedings which are more or less informal in their character, and as to which it is impossible to lay down any strict rules for their guidance. Proceedings before arbitrators are sometimes of this description. It will be for the solicitor who has the conduct of the matter to obtain an appointment from the arbitrator and serve notice of it upon the opposite party. If the cause has been referred by any of the law courts, the brief may also be left with the arbitrator, or it will at any rate be advisable to hand him a concise statement of the case.

At the hearing an opening address may or may not be necessary. It must depend upon the circumstances of each particular case, and the view which the arbitrator takes of the duties devolving upon him. The plaintiff and his witnesses will then be called. The rule as to swearing witnesses is not invariable. The speeches of counsel or solicitor on either side and the order in which

evidence shall be taken are all matters for the discretion of the arbitrator.

It is usually advisable to provide for the mode of dealing with these and other incidental questions in the agreement of submission, and also that the submission may be made a rule of court, which cannot be done in the case of a mere parol submission. The power of the arbitrator as to costs should also be expressly defined beforehand.

Local government inquiries afford no exclusive opportunties to legal practitioners; but, on the other hand, persons or public bodies having important claims to put forward or interests to protect, will naturally select as their representatives men whose technical knowledge and legal training best fit them for the office of advocate.

A local government inspector can hear anybody and everybody he pleases, nor will he be tied to the laws of evidence, inasmuch as the object of these inquiries is to obtain materials for a report to the board on the matters with respect to which such inquiry may have been directed.

Inquiries held in pursuance of the Public Health Act, 1875, are probably the most common.

Section 34 provides for the appointment of an inspector to make inquiry on the spot into the propriety of the construction or extension of any sewage or drainage works proposed to be under-

taken by any local authority, and to hear and report upon any objections to the scheme; and by section 234 (3.) of the same Act it is laid down that certain borrowing powers thereby conferred shall not be exercised until a local government inspector has held a local inquiry and reported to the board. See also section 293.

More important than the foregoing, by reason of the subjects with which they have to deal, are the Board of Trade inquiries held from time to time in every part of the country, but which are necessarily less local in their character. Collisions at sea, explosions, railway accidents, and disasters such as that which occurred to the Tay Bridge not long ago, will lead to inquiries of this description, which from time to time attract almost universal attention.

Formal investigations into railway accidents of a serious character are provided for by section 7 of the Railway Amendment Act, 1871. There is also an Act which was passed in 1874 (37 & 38 Vict. c. 40) to amend generally the powers of the Board of Trade with respect to inquiries, arbitrations, &c.

Section 2 declares that where under the provisions of any special Act the Board of Trade are required or authorized to sanction, approve, confirm, or determine any appointment, matter, or thing, or to make any order, or do any other act or thing for the purposes of such special Act, the Board of Trade may make such inquiry as they

may think necessary for the purpose of enabling them to comply with such requisition or exercise such authority. The inquiry may be held by any person duly authorized by the board. This Act repeals the Board of Trade Inquiries Act, 1872 (the terms of which had given rise to doubts as to the mode in which such inquiries should be conducted).

There is a kindred species of inquiry of quite modern creation, which, however, has some special features. I refer to the investigation into shipping casualties held by a wreck commissioner.

This office was created by the Merchant Shipping Act, 1876. The power of appointing and removing these commissioners (of whom there are not to be more than three at any one time) is in the hands of the Lord Chancellor, who can also make rules from time to time with respect to the summoning of assessors, the procedure, the parties and the persons allowed to appear, &c.

The Wreck Commissioner's Court takes the place of that which was formerly held by two justices under the provisions of Part 8 of the Merchant Shipping Act, 1854, and the provisions of that Act and of the amending Acts to 1876 are to apply to such investigations. A report will be made to the Board of Trade, in which the assessors must join, or else state separately their reasons for dissenting therefrom.

A wreck commissioner has also the powers conferred by section 448 of the Merchant Shipping Act, 1854, on a receiver of wreck.

A formal investigation into a shipping casualty must be so conducted that if a charge is made against any person that person is to have an opportunity of making a defence. The Act of 1876, which was passed chiefly with the object of preventing unseaworthy ships leaving port, also creates a Court of Survey. For information as to the constitution, powers, and procedure of these local tribunals the numerous provisions of the Act must be referred to. With the last mentioned Act must be read the Shipping Casualties Investigations Act, 1879 (42 & 43 Vict. c. 72), which provides for a rehearing and appeal under the conditions mentioned in sections 1 and 2.

At a Board of Trade inquiry it is customary to allow any person to make a statement on the part of the public if tending to throw any light upon the subject matter of the inquiry; but the ordinary rules of evidence are adhered to as far as possible, and this is only fair, having regard to the fact that the result may be to deprive a man of his character or his means of earning a living.

The present practice is to allow none but legal practitioners to act as advocates for the party or parties interested.

The following, which is the mode of procedure

at an investigation necessitated by a shipping casualty, may be taken, subject to incidental modifications, as a guide in all Board of Trade inquiries, there being no absolute rule as to the number of speeches allowed to each advocate. The proceedings will be opened by the counsel or solicitor who represents the Board of Trade and who will state the facts and circumstances which have led to the inquiry.

Witnesses will be called in support of the opening statement. These will probably have already made their depositions *ex parte* to the receiver of wreck for the district. They will now be examined in open court, and cross-examined by the advocate appearing for parties interested, such as the owners of the vessels which collided or the masters of such vessels.

The witnesses may be re-examined upon any point arising in connection with the cross-examination, and the commissioner will of course put such questions as he may think fit.

Upon the conclusion of the case for the Board of Trade it is usual for their counsel or solicitor to hand in the written questions upon which the Board require the opinion of the court.

Thus: The Board of Trade desire the opinion of the court upon the following questions:—

1. What was the cause of the collision?
2. Were steps to prevent the collision duly taken in compliance with the regulations

for preventing collisions at sea or otherwise?

3. Was a proper look out kept on board both ships?
4. Were the collisions caused by the wrongful act or default of the masters, mates, or engineers of the two ships or any or either and which of them?

Of course further or other clauses may be inserted, and the whole of the questions will be signed by the advocate as "solicitor" (or "counsel") for the Board of Trade. Such questions having been propounded, it will be for the solicitor who represents the implicated party to comment thereon and make his defence. He will then call witnesses, if it appears desirable. Sometimes it may happen that his own client will have been already called on the part of the Board of Trade; but this will involve no hardship, so far as the advocate is concerned, as he will have had the opportunity of cross-examining a man in his own interests. Witnesses are, of course, liable to be examined, cross-examined, and re-examined on whichever side they may be called.

It seems that the court itself has no power to call witnesses, but where persons volunteer to give evidence, an arrangement will generally be made to call them on one side or the other, if their testimony seems likely to further the objects of the inquiry.

The evidence having closed on both sides, the commissioner will, in the general way, consult with his assessors without hearing further speeches, and will then deliver judgment and announce the findings of the court upon the various questions submitted on behalf of the Board of Trade.

Upon the question of costs it may be necessary to consult the special Act, if any, which authorizes the inquiry, or, in default of such Act, reference should be made to 37 & 38 Vict. c. 40, s. 3.

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32. For letting furnished lodgings.
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